



***VIA ELECTRONIC DELIVERY***

August 10, 2010

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

obtained & prepared by

[www.911Dispatch.com](http://www.911Dispatch.com)

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The Adams County Communication Center, Inc.**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Brian Shepherd, Deputy Director, Adams County Communication Center, Inc.

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

## Adams County, Colorado

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be: (1) Adams County, Colorado, as well as all surrounding areas extending up to two miles of the geopolitical borders of Adams County, Colorado; and (2) the official property boundary of the Denver International Airport.

## **3. Term and Renewal.**

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

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

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



- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

#### **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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

#### **9. Notices**

Lessor

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

Lessee:

Brian Shepherd, Deputy Director  
Adams County Communication Center, Inc.  
7321 Birch St.  
Commerce City, CO 80022  
303-227-7124  
303-227-8700  
bshepherd@adcom911.org

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:



Name:

Harlin R. McEwen

Title:

Chairman

Dated:

07/29/2010

LESSEE

By:



Name:

William T. Malone

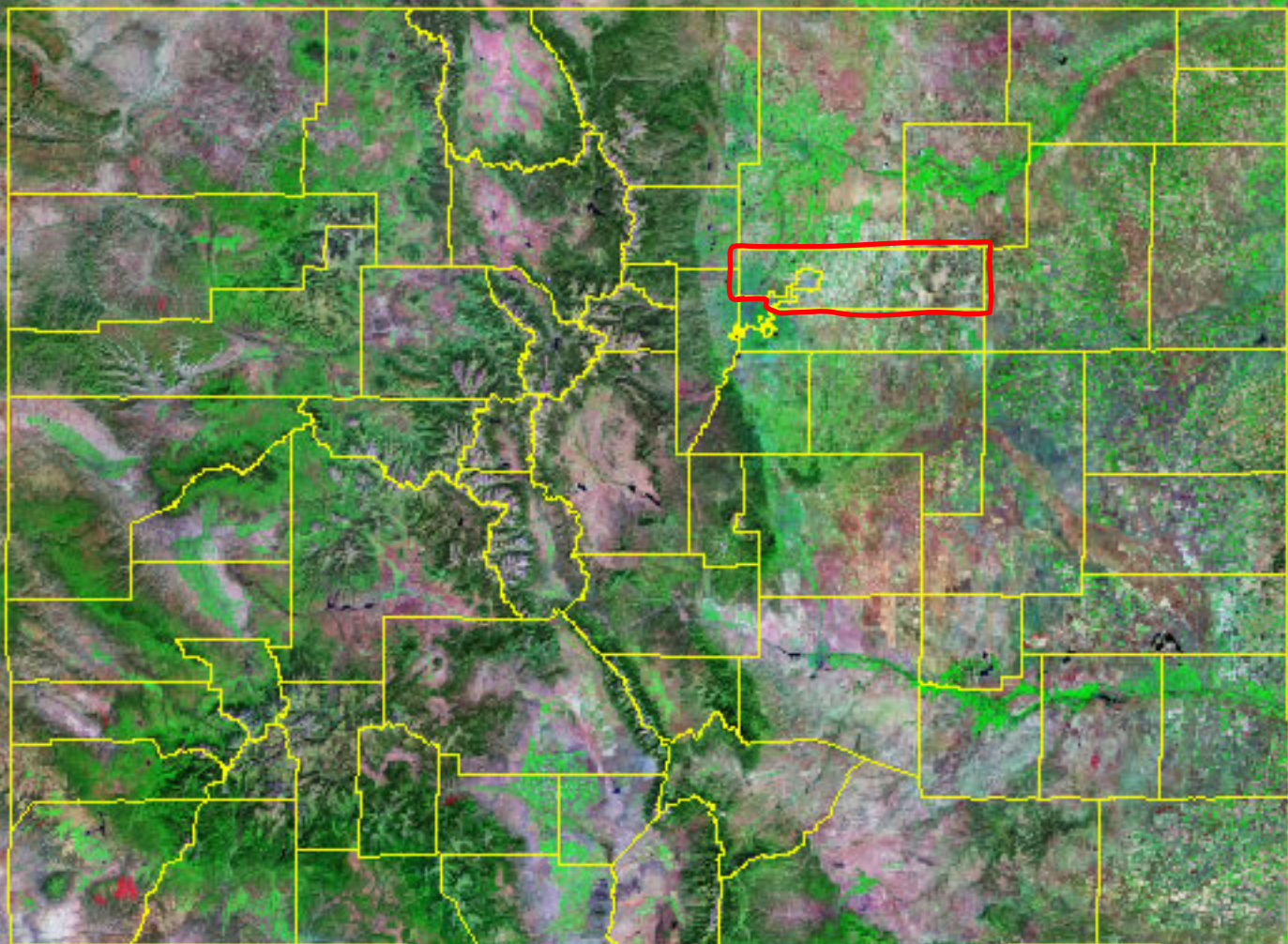
Title:

Director

Dated:

8-1-2010







***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
San Francisco Bay Area Urban Area Region**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the San Francisco Bay Area Urban Area Region. The PSST and San Francisco Bay Area Urban Area Region have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Richard T. Lucia, Undersheriff, Alameda County Sheriff's Office  
Laura Phillips, Executive Director, Dept. of Emergency Management, City & County  
of San Francisco

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



## San Francisco Bay Area Urban Area Region

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement ("Lease" or "Agreement") is entered into by the Public Safety Spectrum Trust Corporation ("PSST" or "Lessor"), which is licensed by the Federal Communications Commission ("FCC") to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the "Leased Spectrum"), and the Alameda County Sheriff's Office on behalf of the San Francisco Bay Area Urban Area Region ("Lessee") (each a "Party," and, collectively, "the Parties"). This Lease is subject to the FCC's May 12, 2010 Order, FCC 10-79 ("FCC Order"). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC's rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.

#### 1. Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the Bay Area Urban Area as defined in the maps included as Appendix A.

## **3. Term and Renewal.**

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

## **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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



## 9. Notices

Lessor:

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

Lessee:

Richard T. Lucia, Undersheriff  
Alameda County Sheriff's Office  
1401 Lakeside Drive, 12<sup>th</sup> Floor  
Oakland, CA 94612  
510-208-9838  
510-272-3796  
Email: rlucia@acgov.org

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:



Name: Harlin R. McEwen

Title: Chairman

Dated: 07/28/2010

THE ALAMEDA COUNTY SHERIFF'S OFFICE  
LESSEE

By:



Name: Gregory J. Altem

Title: Alameda County Sheriff/Coroner

Dated:

7/30/10

## Appendix A.

### Coverage Maps & Site List

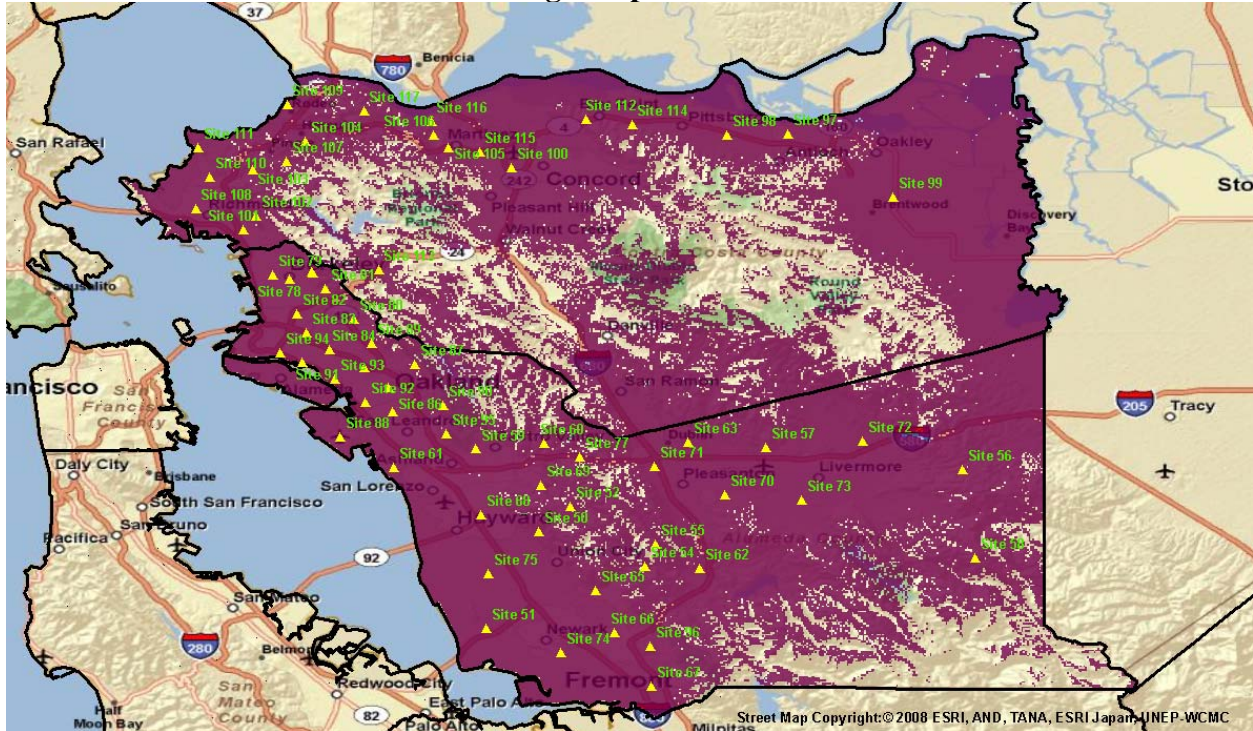


Figure 1: East Bay Operational Area (Alameda & Contra Costa Counties)

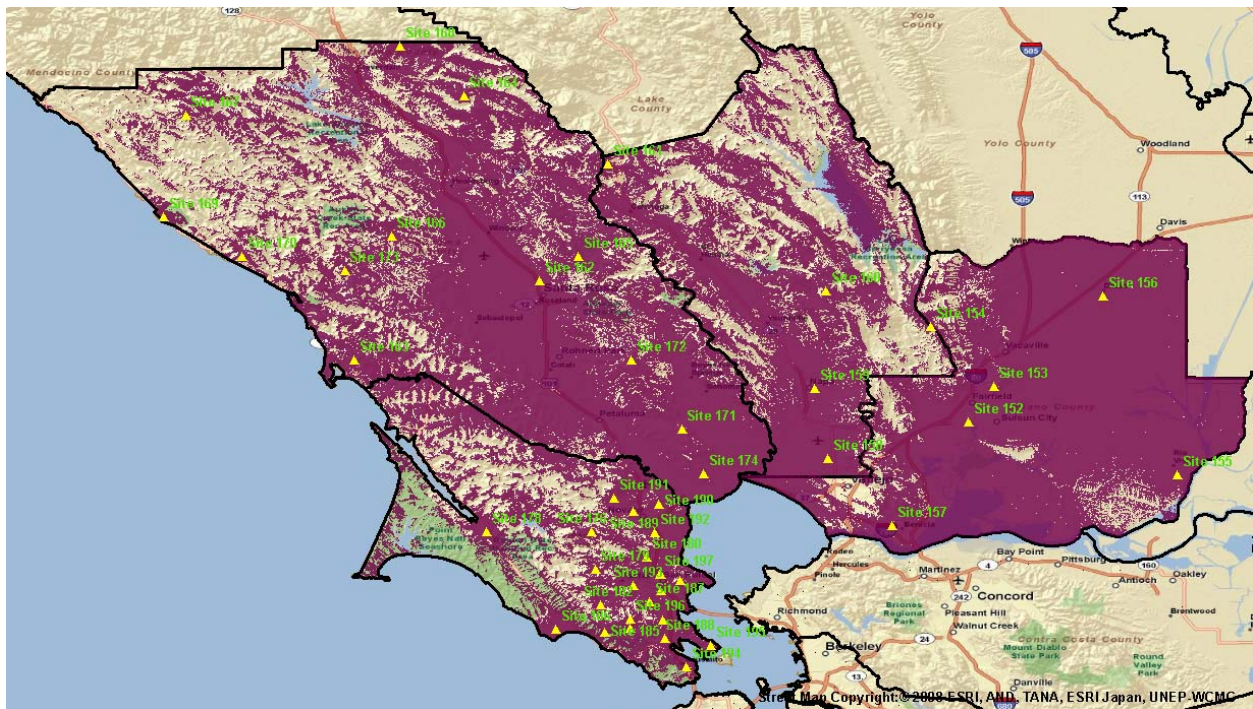


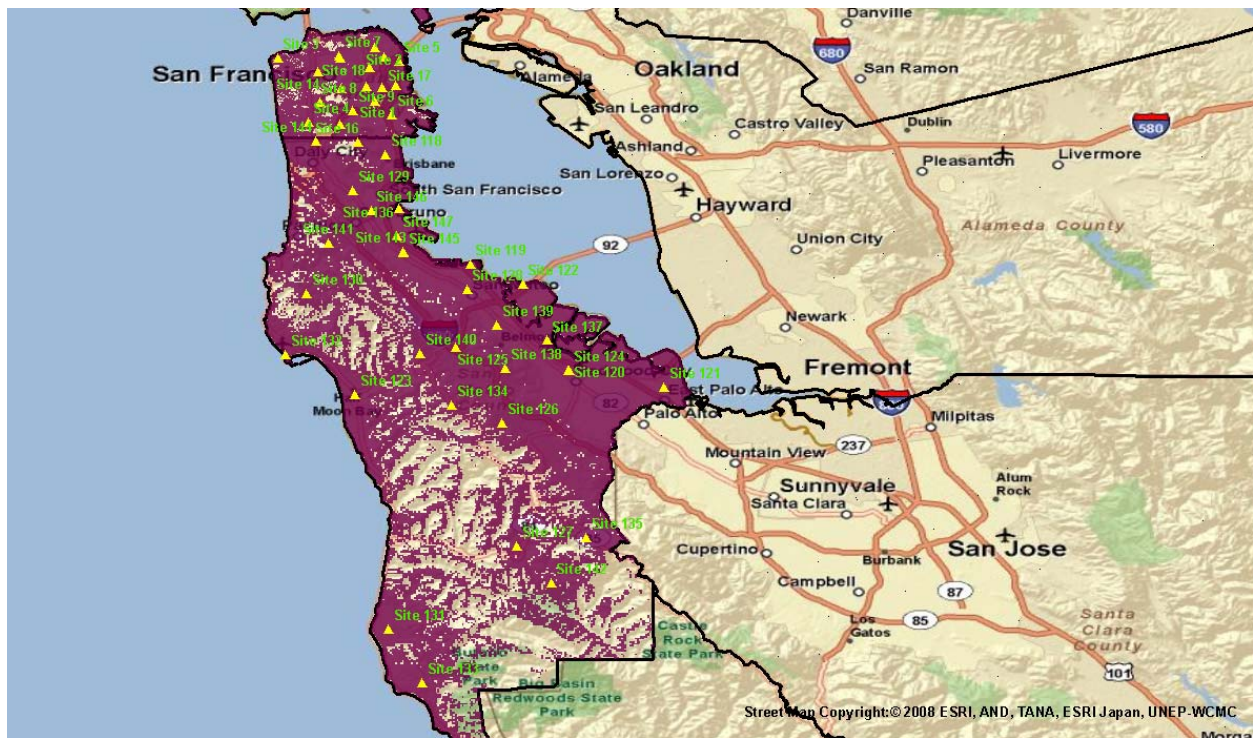
Figure 2: North Bay Operational Area (Marin, Sonoma, Napa, and Solano Counties)

A-1

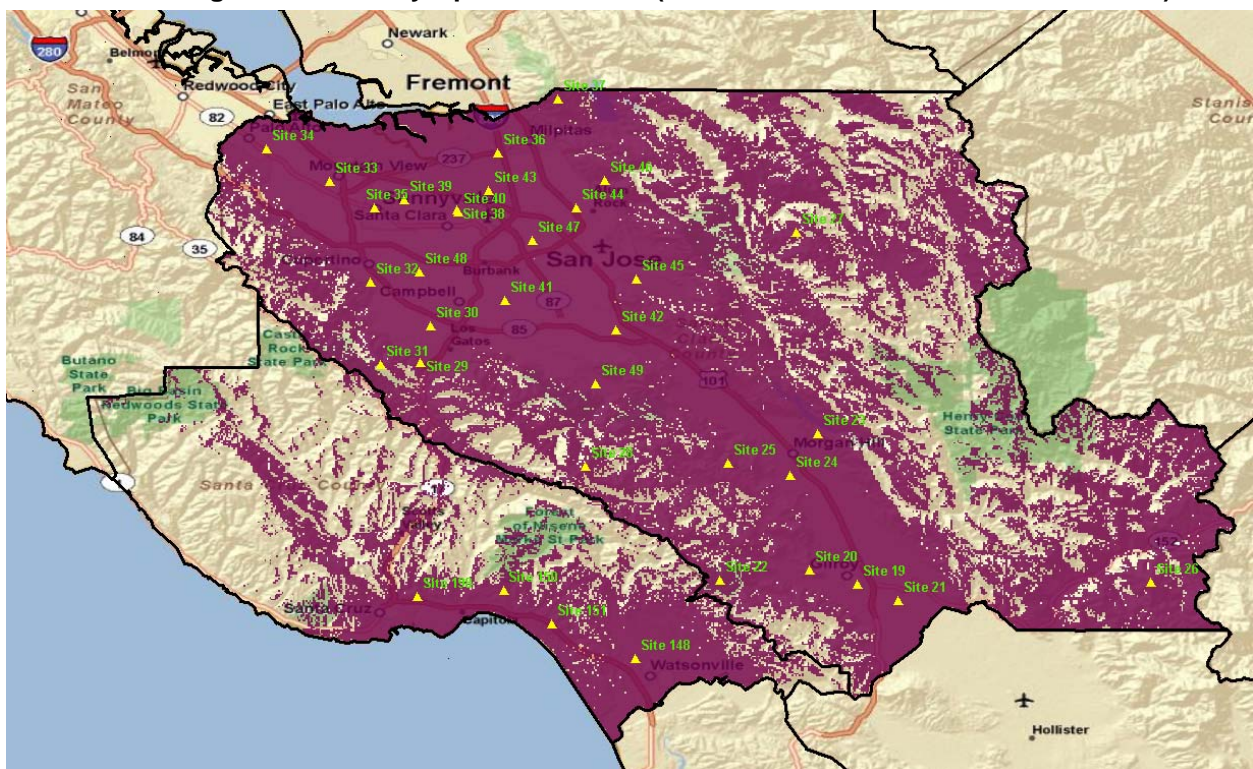
Bay Area Urban Area

PSST Lease Appendix A



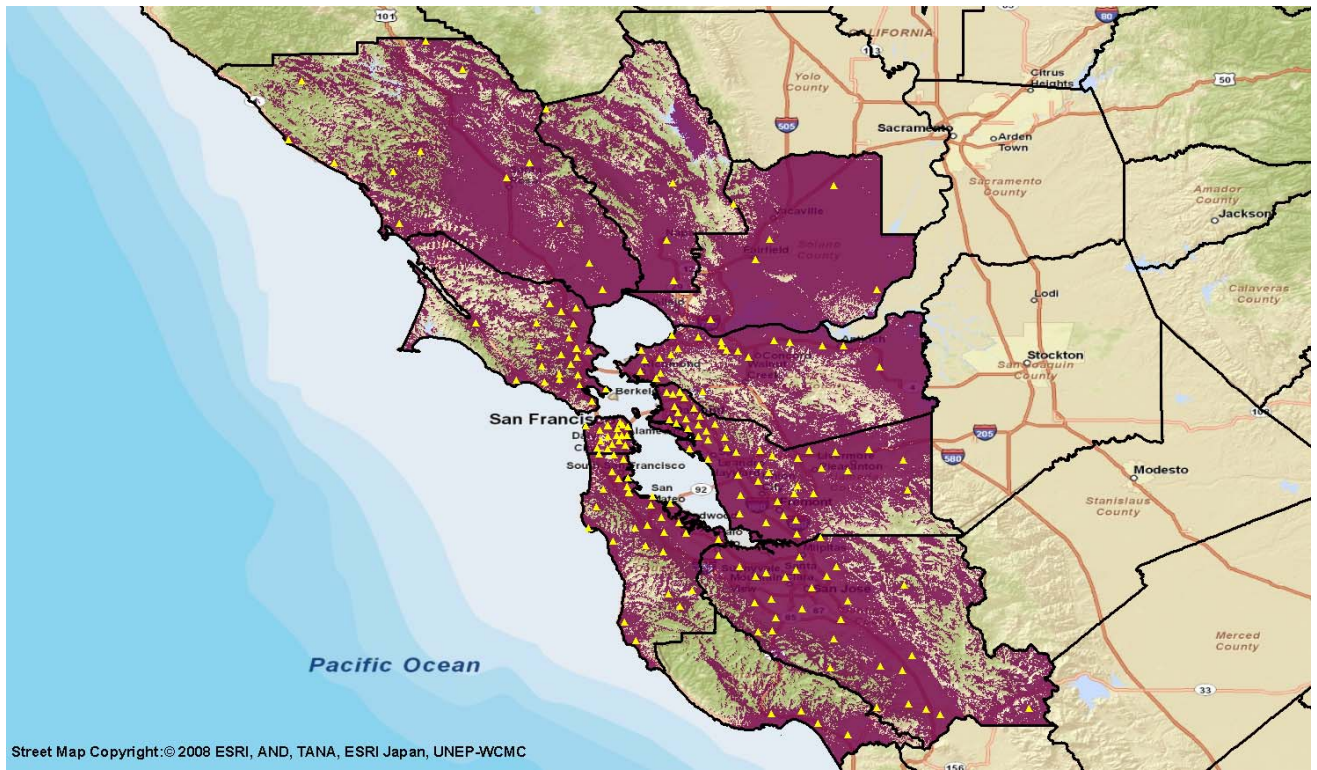


**Figure 3: West Bay Operational Area (San Francisco and San Mateo Counties)**



**Figure 4: South Bay Operational Area (Santa Clara and Santa Cruz Counties)**





**Figure 5: BayWeb Composite Coverage**



***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of Boston, Massachusetts**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
William Oates, Chief Information Officer, Dept. of Innovation and Tech., City of Boston

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

## City of Boston

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and The City of Boston, Massachusetts (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2010 Order, FCC 10-79 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.

#### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the legal boundaries of The City of Boston and adjacent waters as depicted in the attached map.

## **3. Term and Renewal.**

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

## **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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



Lessee:


William Oates  
Chief Information Officer  
Department of Innovation and Technology  
City of Boston  
One City Hall Square, Room 703  
Boston, Massachusetts 02201  
617-635-3358  
617-635-2872  
Email: William.Oates@cityofboston.gov

Bureau:


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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

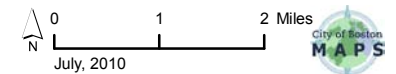
By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/29/2010

LESSEE

By:   
Name: William Oates  
Title: Chief Information Officer  
Dated: JUL 29 2010



City of Boston





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of Charlotte, North Carolina**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Dennis Baucom, Business Support Services, City of Charlotte

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



## City of Charlotte

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

---

#### 1. Agreement.

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be Mecklenburg County, North Carolina (see maps attached).

## **3. Term and Renewal.**

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
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#### **6. Representations and Warranties.**

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



- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
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## **9 Notices.**


Lessor:  
Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman  
1101 K St., NW, Suite 8100, Washington, DC 20005  
607-227-1664  
chiefhrm@pubsaf.com

Lessee:  
Dennis Baucom  
City of Charlotte  
Business Support Services  
600 East 4<sup>th</sup> Street  
Charlotte, NC 28202  
704-336-5349  
dbaucom@ci.charlotte.nc.us


Bureau:  
Federal Communications Commission  
David Furth, Deputy Bureau Chief  
Public Safety and Homeland Security Bureau  
445 12<sup>th</sup> St. SW, Washington, DC 20554  
(202) 418-1300  
(202) 418-2817  
Email: david.furth@fcc.gov

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

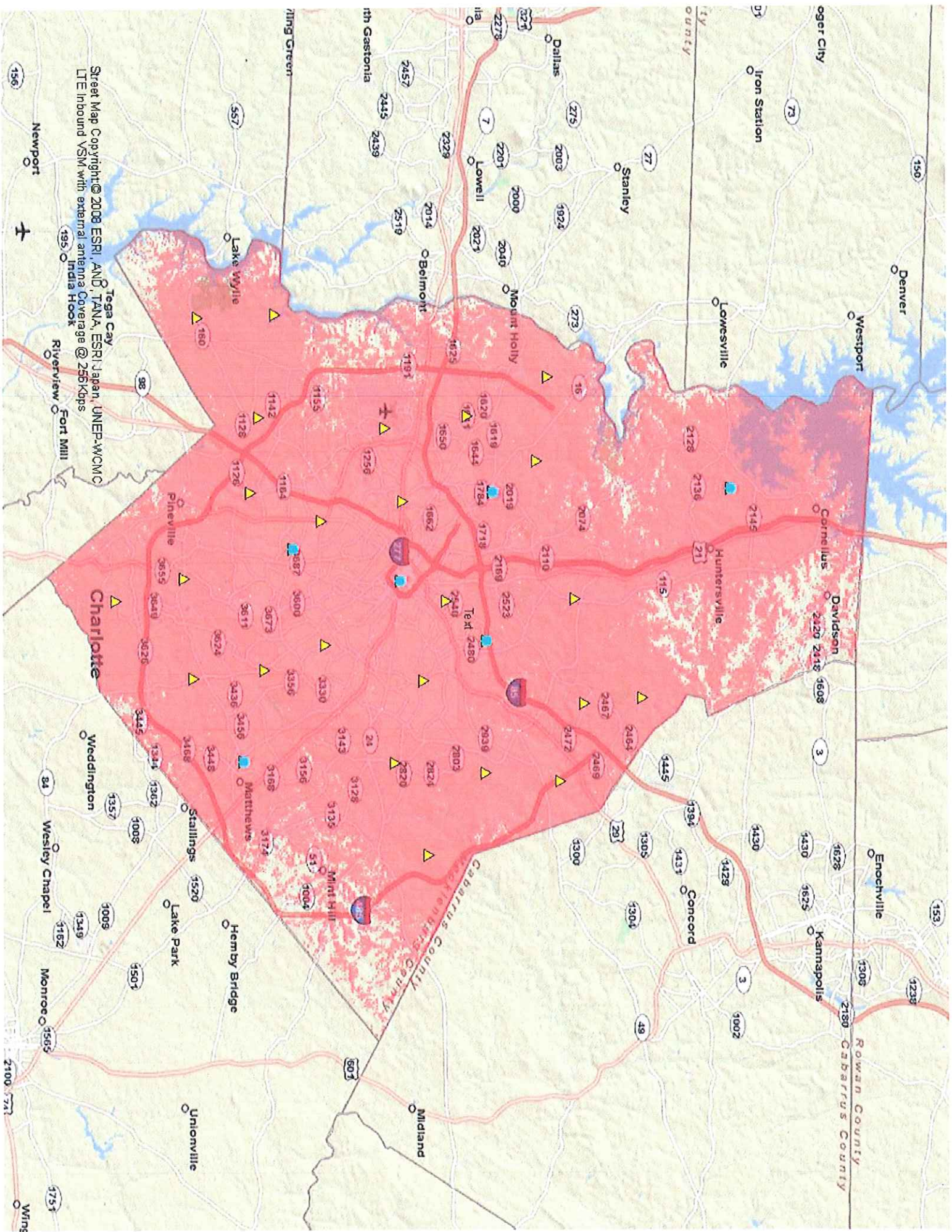
LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/29/2010

LESSEE: (Name of Lessee)

By:   
Name: **CHARLES L. K. ROBINSON**  
Title: **Key Business Executive**  
**BUSINESS SUPPORT SERVICES**  
Dated: 08/03/2010





Street Map Copyright © 2008 ESRI, AND, TANA, ESRI Japan, UNEP-WCMC  
LTE Inbound VSM with external antenna Coverage @ 256Kbps

Charlotte

Weddington

Wesley Chapel

Monroe

Winn

Unionville

Stallings

Lake Park

Hemby Bridge

Matthews

3174

3168

3156

3143

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3128

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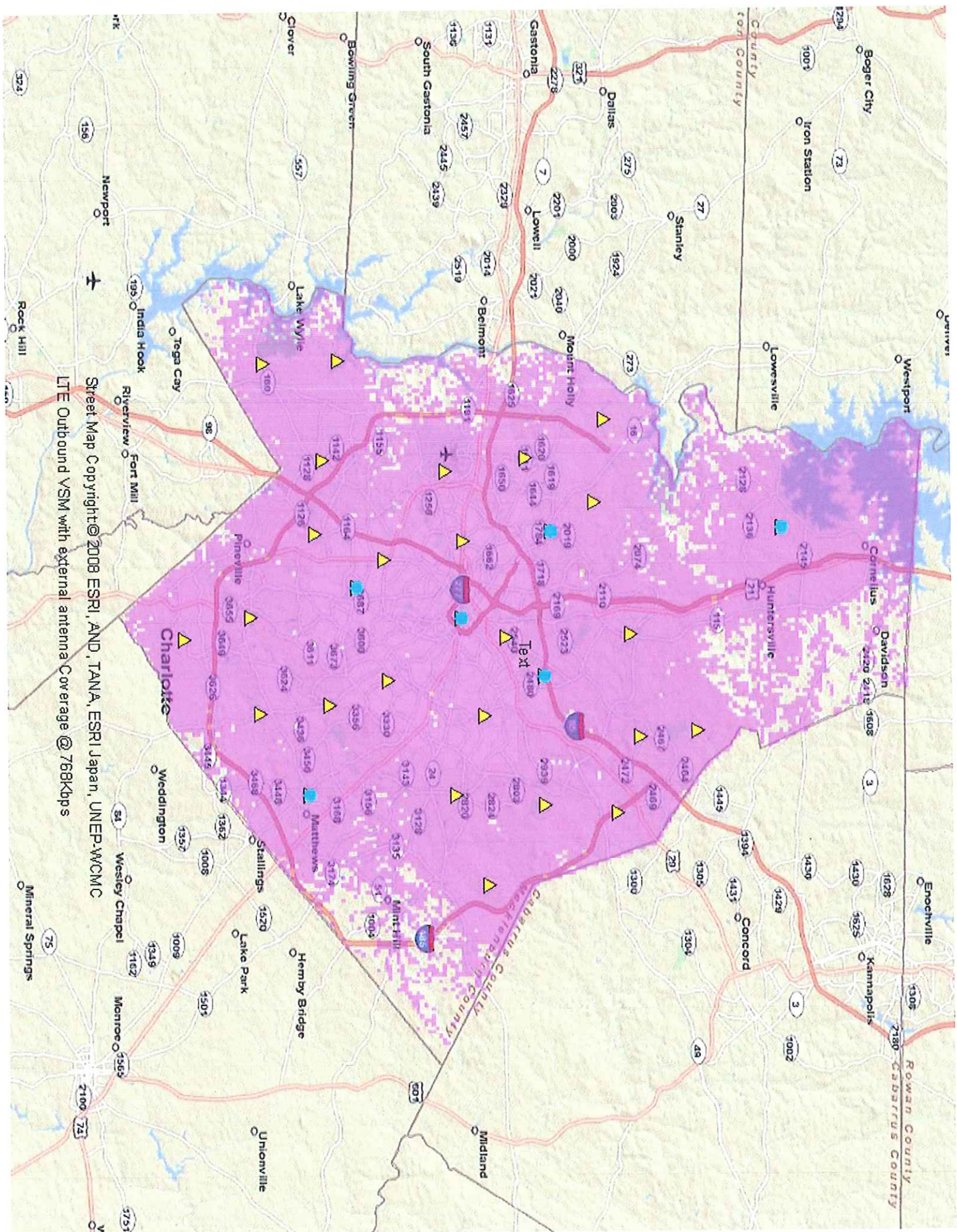
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Street Map Copyright© 2008 ESRI, AND, TANA, ESRI Japan, UNEP-WCMC  
LTE Outbound VSM with external antenna Coverage @ 768Kbps



## City of Chesapeake, Virginia

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and the City of Chesapeake, Virginia (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2010 Order, FCC 10-79 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.

#### 1. Agreement.

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

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

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

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

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

- ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.
  - iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
  - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
  - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
  - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be the City of Chesapeake, Virginia (map attached of area to be served).

## **3. Term and Renewal.**

- a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. **Governing Law.** This Agreement shall be governed by the law of the District of Columbia.
- c. **Disputes.** The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. **Specific Performance.** The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. **Amendments.** This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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

9 Notices.

Lessor:

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman  
1101 K St., NW, Suite 8100, Washington, DC 20005  
607-227-1664  
chiefhrm@pubsaf.com

Lessee:

City of Chesapeake, Virginia  
Bernie Reaser, Radio Systems Administrator  
Department of Information Technology  
300 Shea Drive  
Chesapeake, VA 23322  
Office: (757) 382-6692  
Mobile: (757) 636-2454  
Email: breaser@cityofchesapeake.net

Bureau:

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

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

LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:

Harlin R. McEwen

Name:

Harlin R. McEwen

Title:

Chairman

Dated:

8/17/2010

LESSEE: CITY OF CHESAPEAKE, VIRGINIA

By:

Wanda A. Barnard-Bailey for William A. Harrell

Name:

Wanda A. Barnard-Bailey

William A. Harrell

Title:

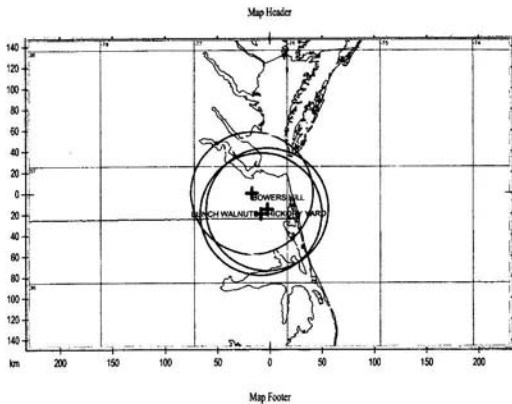
Deputy City Manager

City Manager

Dated:

8/16/10







***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The District of Columbia**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Kenneth R. Boley, Office of the Chief Technology Officer, District of Columbia

---

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

## District of Columbia

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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

- iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
  - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
  - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
  - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be the District of Columbia (see description and map attached).

## **3. Term and Renewal.**

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



#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

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

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

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

**9 Notices.**

**Lessor:**

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman  
1101 K St., NW, Suite 8100, Washington, DC 20005  
607-227-1664  
chiefhrm@pubsaf.com

**Lessee:**

Contact: Kenneth R. Boley  
Office of the Chief Technology Officer  
411 4<sup>th</sup> Street, NW, Suite 930S  
202-478-5879  
kenneth.boleyn@dc.gov

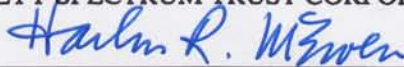
**Bureau:**

Federal Communications Commission  
Public Safety and Homeland Security Bureau  
445 12<sup>th</sup> St. SW, Washington, DC 20554  
(202) 418-1300  
(202) 418-2817  
[email address]

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

**LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION**

By:



Name:

Harlin R. McEwen

Title:

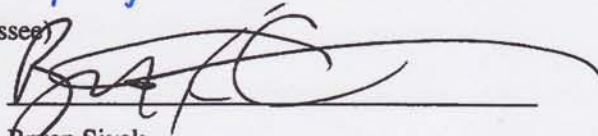
Chairman

Dated:

7/29/2010

**LESSEE: (Name of Lessee)**

By:



Name:

Bryan Sivak

Title:

Chief Technology Officer

Dated:

July 16, 2010



*Incumbent Narrowband Operations in Public Safety Broadband Spectrum*

In the District of Columbia: None

Adjacent to the District of Columbia: Virginia State Police Statewide Area Radio System (STARS)

*Text Description of Geographic Boundaries of Proposed Service Area*

Service area is the area of the District of Columbia, defined by the District of Columbia boundary stones and the Potomac River's western riverbank. The approximate longitude and latitude of the northern, southern, eastern, and western corners are noted below:

North: -77.041, 38.996

South: -77.039, 38.792

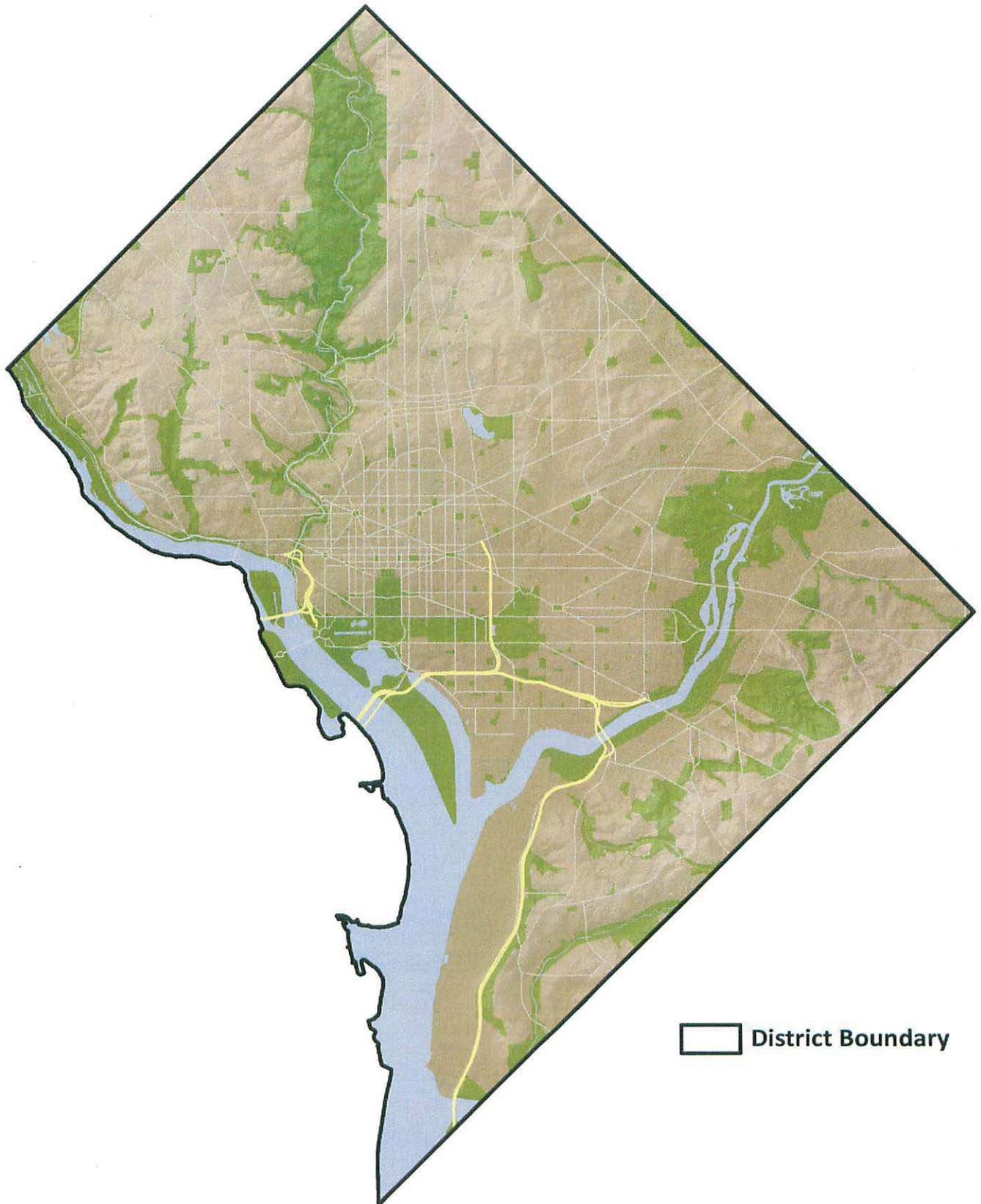
West: -77.120, 38.934

East: -76.909, 38.893

A map representing this area is attached.



# District of Columbia Boundary



 District Boundary



***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
FoxComm – Calumet, Outagamie, and Winnebago Counties, Wisconsin**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with FoxComm, a consortium of Calumet, Outagamie, and Winnebago Counties, Wisconsin. The PSST and FoxComm, a consortium of Calumet, Outagamie, and Winnebago Counties, Wisconsin have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Thomas L. Swadley, Management Information Coordinator, FoxComm

---

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



**FoxComm, a consortium of  
Calumet, Outagamie and Winnebago Counties, Wisconsin**

**LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT**

This Long Term *De Facto* Spectrum Lease Agreement ("Lease" or "Agreement") is entered into by the Public Safety Spectrum Trust Corporation ("PSST" or "Lessor"), which is licensed by the Federal Communications Commission ("FCC") to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the "Leased Spectrum"), and FoxComm, a consortium of the Counties of Calumet, Outagamie and Winnebago, Wisconsin (hereinafter collectively, "Lessee") (each a "Party," and, collectively, "the Parties"). This Lease is subject to the FCC's May 12, 2010 Order, FCC 10-79 ("FCC Order"). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC's rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. [If Lessee is not a state, Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.]

**1. Agreement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be Calumet, Outagamie and Winnebago Counties, Wisconsin.

## **3. Term and Renewal.**

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

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.



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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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

Lessee:

Thomas L. Swadley  
FoxComm,  
c/o 206 Court Street  
Chilton, WI 53014  
920-849-2361 ext 250

Email: Swadley.Tom@co.calumet,wi.us

Bureau:

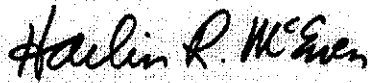
Federal Communications Commission  
David Furth, Deputy Bureau Chief  
Public Safety and Homeland Security Bureau  
445 12th St. SW  
Washington, DC 20554  
(202) 418-1300  
Email: david.furth@fcc.gov.

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:

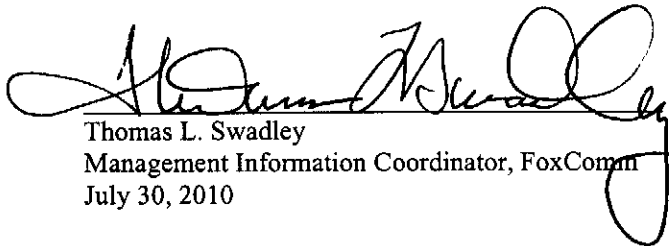
Name: Harlin R. McEwen  
Title: Chairman  
Dated: July 30, 2010

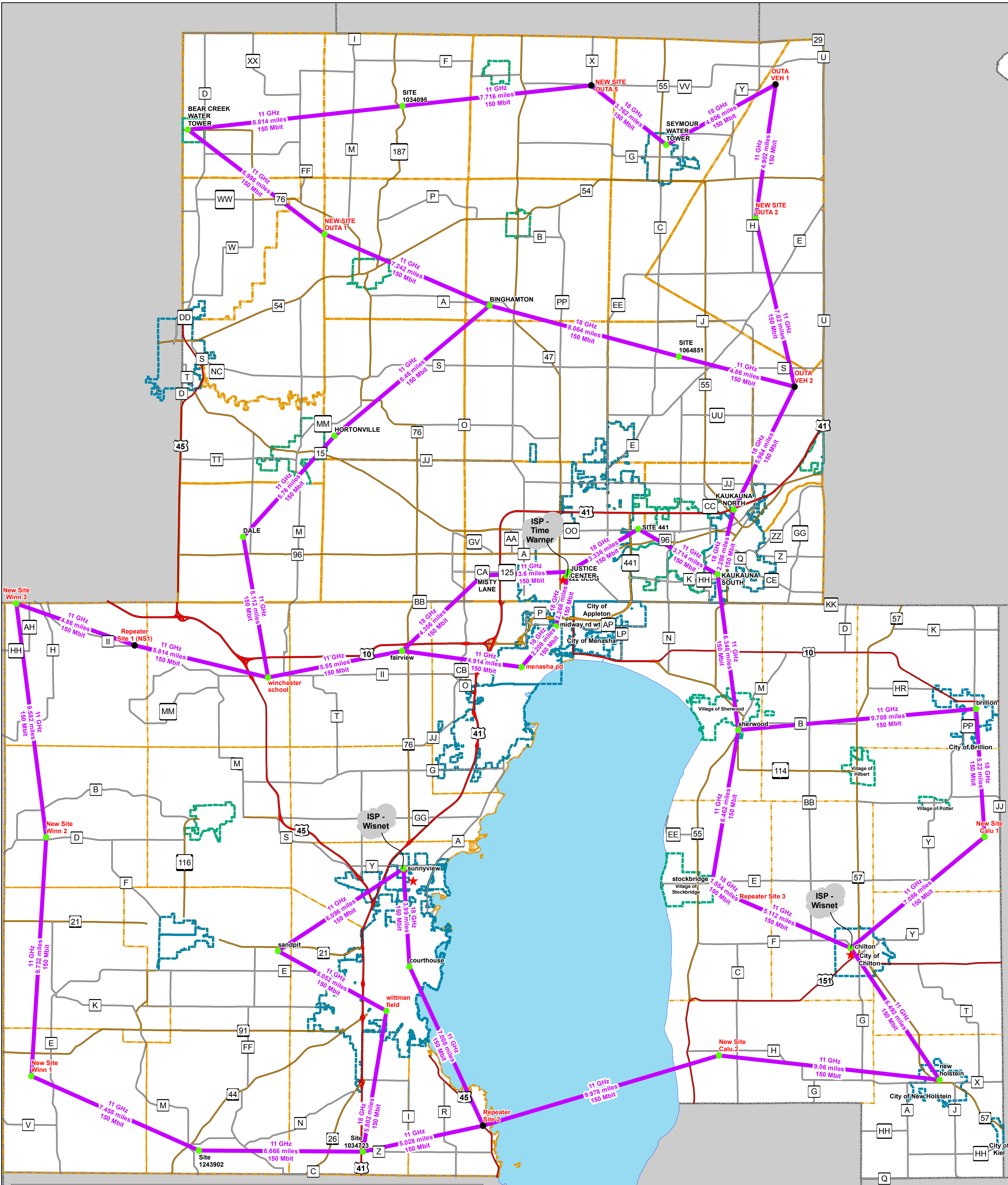


LESSEE

By:

Name: Thomas L. Swadley  
Title: Management Information Coordinator, FoxComm  
Dated: July 30, 2010





# FoxComm Towers

- New Tower
- Existing Tower
- ABC Existing Tower Label
- ABC New Tower Label
- ★ 911 Center
- FoxComm Tower Links
- Fiber Line
- Federal Highways
- State Highways
- County Highways
- City Boundary
- Village Boundary
- Town Boundaries
- Lake Winnebago

Map Date: June 2010



## Winnebago Fiber Line

200 Feet

## Calumet Fiber Line

200 Feet





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

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

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Russ K. Saito, Dept. of Accounting and General Services, State of Hawaii

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

## State of Hawaii

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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

- iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
- iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
- v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
- vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

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

## **3. Term and Renewal.**

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

## **4. Termination.**

- f
- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
  - b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.



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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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

Lessee:


Russ K. Saito  
State of Hawaii,  
Department of Accounting and General Services  
PO Box 119  
Honolulu, HI 96810  
(808) 586-0400  
(808) 586-0775 (fax)  
Email: dags@hawaii.gov

Bureau:


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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: July 30, 2010

LESSEE

By:   
Name: Russ K. Saito  
Title: Comptroller  
Dated: August 2, 2010



***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
Iowa Statewide Interoperable Communications System Board**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the Iowa Statewide Interoperable Communications System Board. The PSST and the Iowa Statewide Interoperable Communications System Board have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Todd Misel, Chairman, Iowa Statewide Interoperable Communications System Board

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

# Iowa Statewide Interoperable Communications System Board

## LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

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

## **3. Term and Renewal.**

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

## **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

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

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



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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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

Lessee:


Todd Misel, Chairman  
Iowa Statewide Interoperable Communications System Board  
215 E. 7<sup>th</sup> St.  
Des Moines, IA 50319  
Office: (515) 725-6111  
Fax: (515) 725-6117  
Email: misel@dps.state.ia.us

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/30/2010

LESSEE

By:   
Todd Misel  
Chairman

Dated: 7/30/2010





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The County of Los Angeles, California**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Scott L. Poster, Interim Dir., Los Angeles Regional Interoperable Communications System

---

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

## County of Los Angeles

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the County of Los Angeles, California (see attached maps).

## **3. Term and Renewal.**

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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



- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

#### **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties.
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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

## 9 Notices.

Lessor:

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman  
1101 K St., NW, Suite 8100, Washington, DC 20005  
607-227-1664  
chiefhrm@pubsaf.com

Lessee:

Scott L. Poster, Interim Director  
Los Angeles Regional Interoperable Communications System  
2525 Corporate Place, Suite 200  
Monterey Park, CA 91754  
Office: (323) 881-8294  
Fax: (323) 264-0718  
Email: [sposter@la-rics.org](mailto:sposter@la-rics.org)

Bureau:

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

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

LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:

Name: Harlin R. McEwen

Title: Chairman

Dated: 07/29/2010

LESSEE: (Name of Lessee)

By:

Name: Scott L. Poster

Title: Interim Director

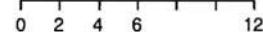
Dated: 07/30/2010

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REV. 6/06 LC

Pacific Ocean

SCALE IN MILES



7

## INCORPORATED AREAS

100

UNINCORPORATED AREAS

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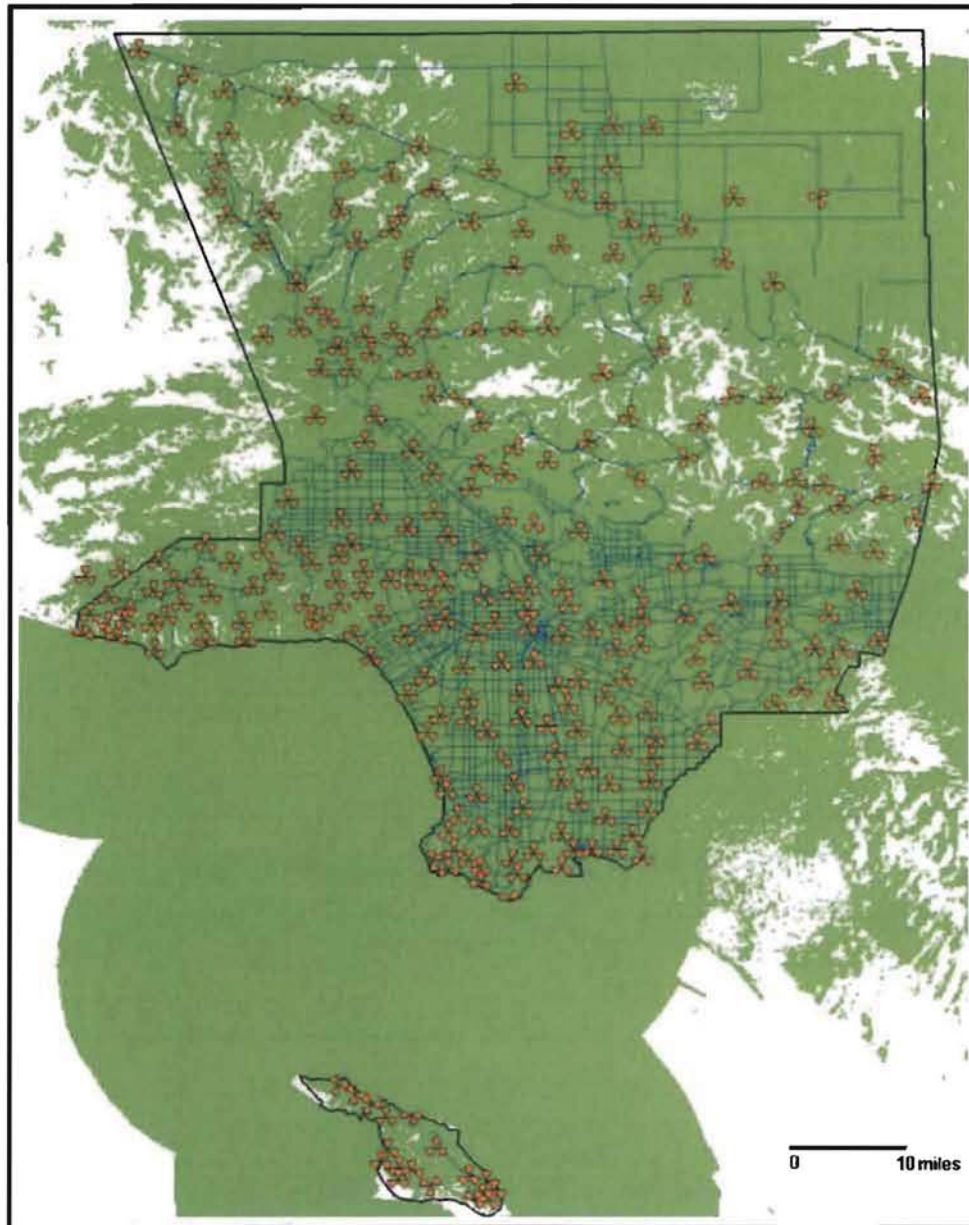
SUPERVISORIAL DISTRICT  
BOUNDARIES

4,084 SQUARE MILES







LA-SafetyNet  
LTE System Coverage  
System Overview

Easygrants ID: 7835



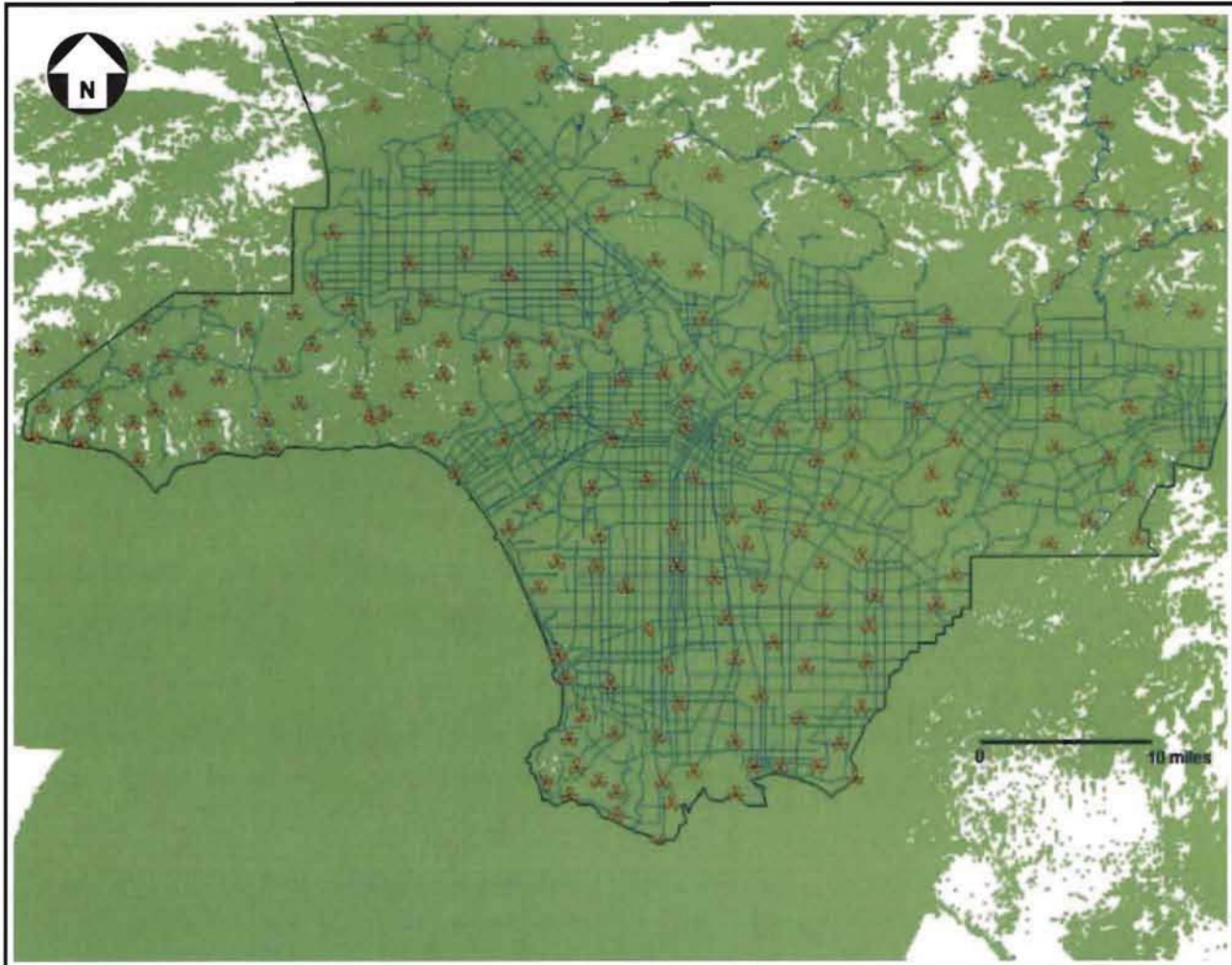
Legend

	LTE System Coverage: 768 kbps downlink 200 kbps uplink		Proposed Service Area Los Angeles County Border
	Major and Critical Roads		Three Sector eNodeB Site Location





LA-SafetyNet  
LTE System Coverage  
Basin Detail

Easygrants ID: 7835

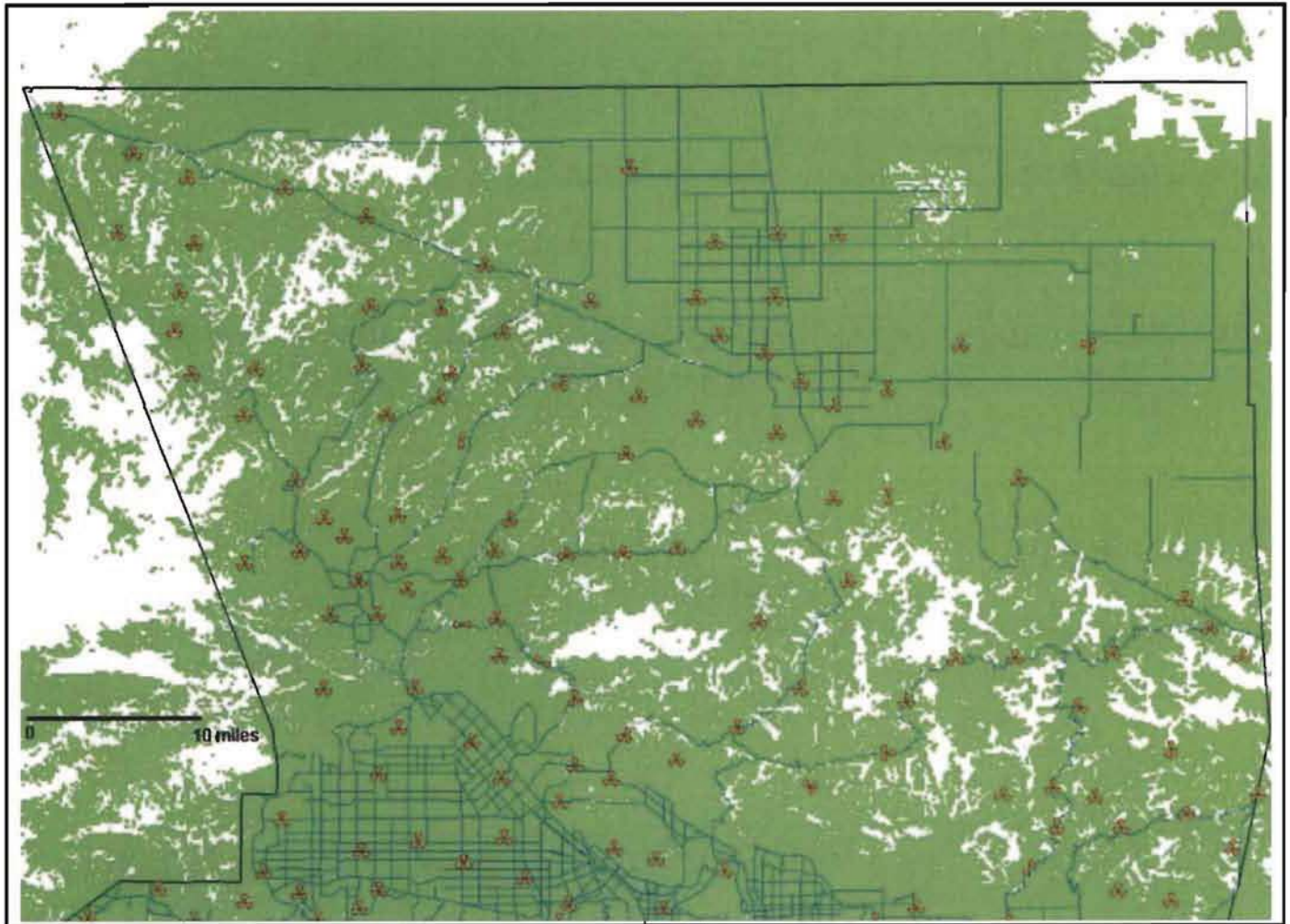


Legend

	LTE System Coverage: 768 kbps downlink 200 kbps uplink		Proposed Service Area Los Angeles County Border
	Major and Critical Roads		Three Sector eNodeB Site Location

LA-SafetyNet  
LTE System Coverage  
North County Detail

Easygrants ID: 7835



Legend

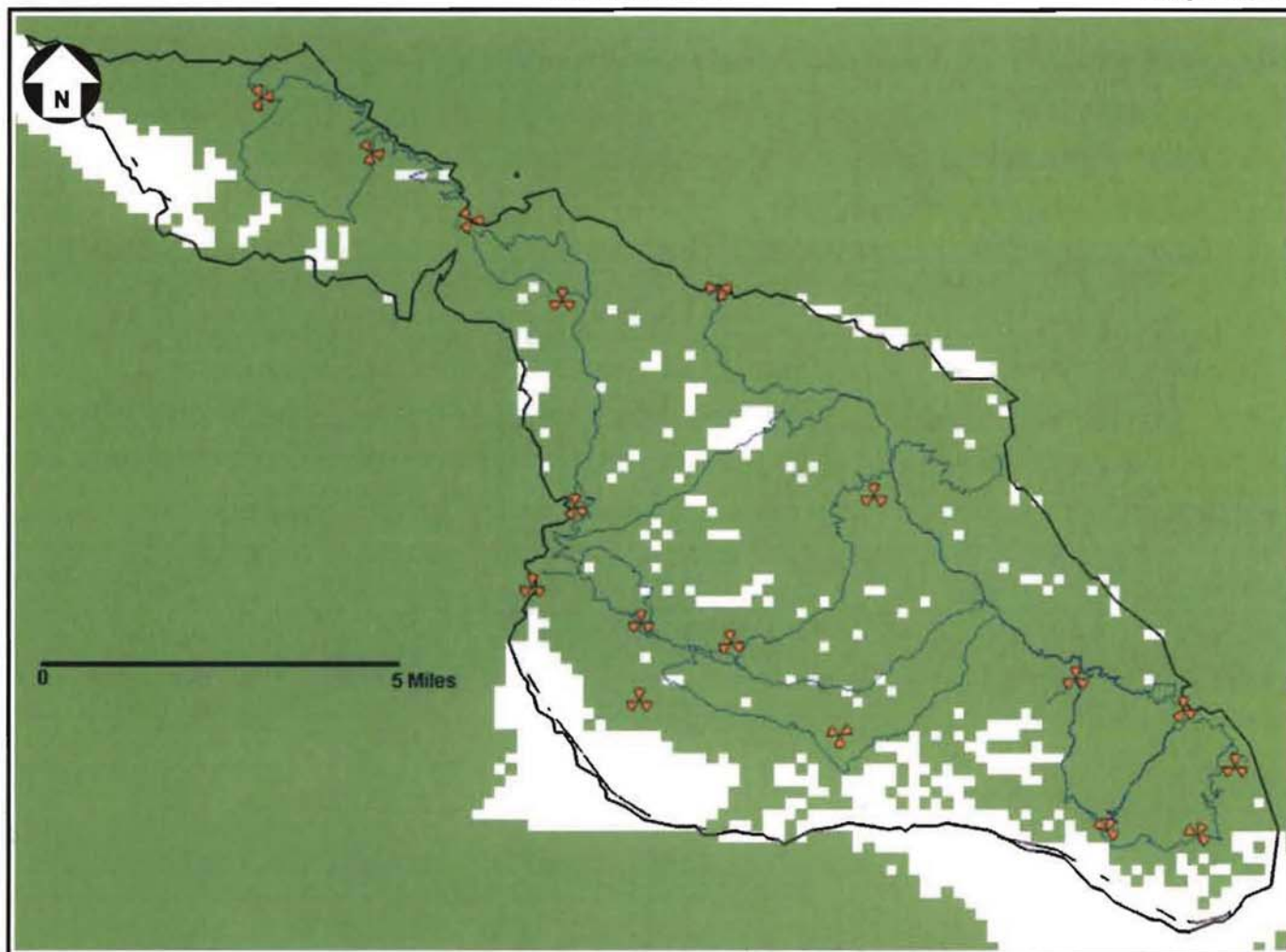
- |  |  |
|--|--|
|  LTE System Coverage:<br>768 kbps downlink<br>200 kbps uplink |  Proposed Service Area<br>Los Angeles County Border |
|  Major and Critical Roads                                     |  Three Sector eNodeB Site Location                  |

Televate, LLC





June 27, 2010

LA-SafetyNet  
 LTE System Coverage  
 Catalina Island Detail

Easygrants ID: 7835



Legend

	LTE System Coverage: 768 kbps downlink 200 kbps uplink		Proposed Service Area Los Angeles County Border
	Major Roads		Three Sector eNodeB Site Location





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of Mesa, Arizona – TOPAZ Regional Wireless Cooperative**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the City of Mesa, Arizona, as administrative manager for the TOPAZ Regional Wireless Cooperative. The PSST and the City of Mesa, Arizona, as administrative manager for the TOPAZ Regional Wireless Cooperative, have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Dale Shaw, Executive Director, TOPAZ Regional Wireless Cooperative

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



# City of Mesa - TOPAZ Regional Wireless Cooperative (TRWC)

## LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and the City of Mesa, Arizona, as administrative manager of the TOPAZ Regional Wireless Cooperative (TRWC) (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2010 Order, FCC 10-79 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.

### 1. Agreement.

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

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

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

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

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

- ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.
  - iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
  - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
  - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
  - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be defined as the jurisdictional boundaries of the TRWC consisting of the Cities of Mesa, Arizona, and Apache Junction, the Towns of Gilbert and Queen Creek and the Apache Junction Fire District (see map attached).

## **3. Term and Renewal.**

- a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide

license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. **Governing Law.** This Agreement shall be governed by the law of the District of Columbia.
- c. **Disputes.** The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. **Specific Performance.** The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. **Amendments.** This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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



## 9. Notices

Lessor

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

Lessee:


City of Mesa on behalf of the TRWC  
Dale Shaw, Executive Director  
P.O. Box 968  
Mesa, AZ 85211-0968  
(480) 644-5377  
(480) 644-3982  
Email: dale.shaw@mesaaz.gov

Bureau:


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

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

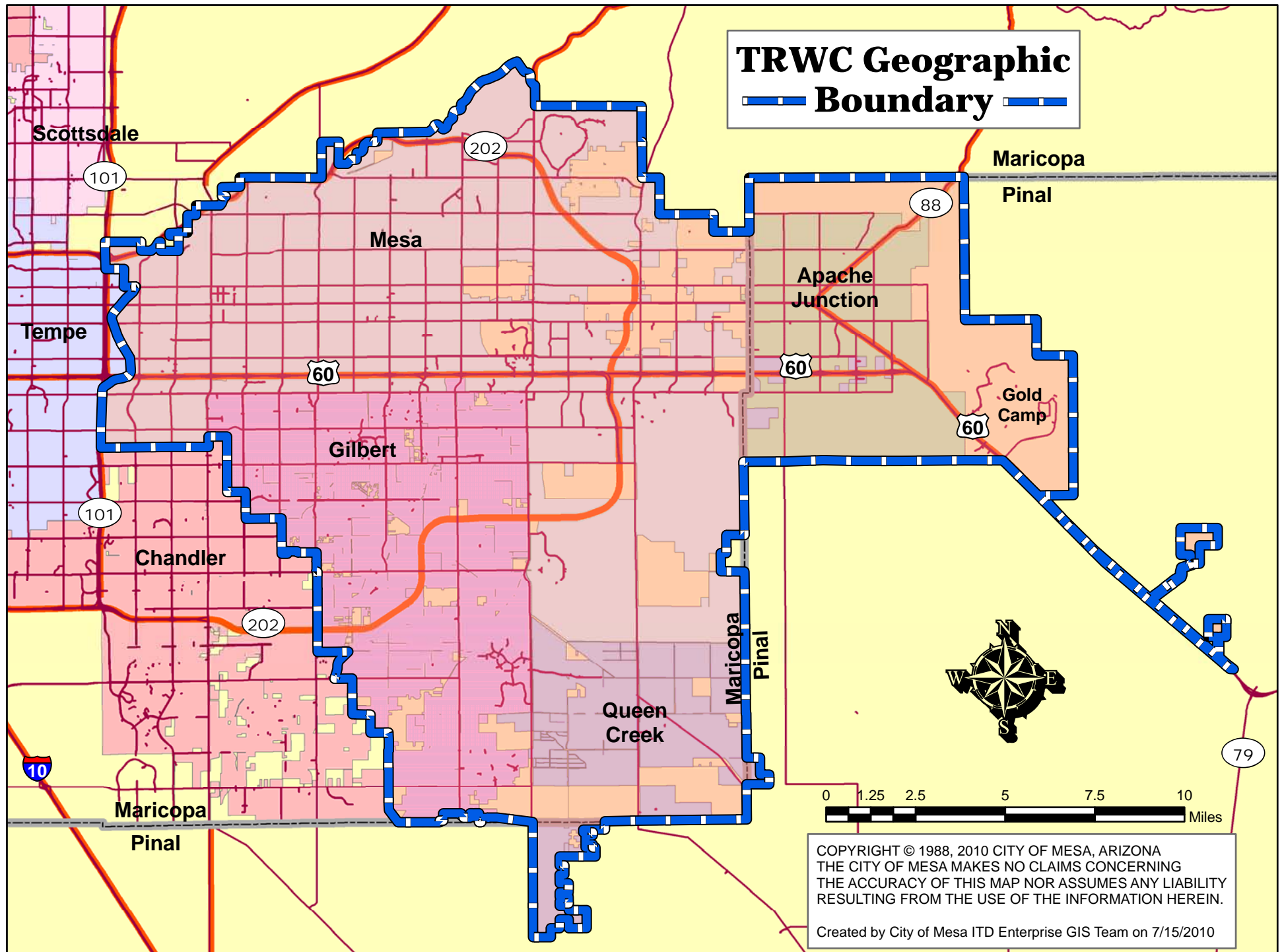
PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/29/2010

LESSEE

By:   
Name: Dale Shaw  
Title: TRWC Executive Director  
Dated: 08/02/2010

# TRWC Geographic Boundary





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
Mississippi Wireless Communication Commission**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Bill Roach, Executive Officer, Mississippi Wireless Communication Commission

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

# State of Mississippi

## LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the entire area within the jurisdictional boundaries of the State of Mississippi.

## **3. Term and Renewal.**

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

## **4. Termination.**

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

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

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

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

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

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

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

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

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

## **6. Representations and Warranties.**

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

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

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

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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

**Lessee:**

Mississippi Wireless Communication Commission  
Bill Roach, Executive Officer, or his successor  
412 E. Woodrow Wilson Avenue, Mail Stop 6601  
Jackson, MS 39216  
Phone (601) 359-5347  
Fax (601) 359-5362  
Email: [broach@wcc.ms.gov](mailto:broach@wcc.ms.gov)

**Bureau:**

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

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

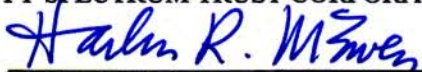
**PUBLIC SAFETY SPECTRUM TRUST CORPORATION**

By:

Name:

Title:

Dated:



Harlin R. McEwen

Chairman

7/30/2010

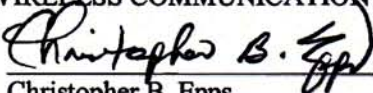
**MISSISSIPPI WIRELESS COMMUNICATION COMMISSION**

By:

Name:

Title:

Dated:



Christopher B. Epps

Chairman

7/20/2010

**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

By:

Name:

Title:

Dated:



David L. Litchlitter

Executive Director

7/20/2010





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

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

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Adel Ebeid, Chief Technology Officer, Office of Information Tech., State of New Jersey

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

## State of New Jersey

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and the State of New Jersey, Office of Information Technology, 300 Riverview Plaza, P.O. Box 212, Trenton, New Jersey 08625 (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2010 Order, FCC 10-79 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies.

#### 1. Agreement.

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

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

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

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

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

- ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.
  - iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
  - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
  - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
  - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be the geographic boundaries of the State of New Jersey.

## **3. Term and Renewal.**

- a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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



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

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

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman of the Board  
1101 K St., Suite 8100, Washington, DC 20005

(607) 227-1664  
Email: chiefhrm@pubsaf.com

Lessee:  
Adel Ebeid  
Chief Technology Officer  
State of New Jersey, Office of Information Technology  
300 Riverview Plaza, P.O. Box 212  
Trenton New Jersey 08625  
Phone: (609) 984-4082  
Email: [Adel.Ebeid@oit.state.nj.us](mailto:Adel.Ebeid@oit.state.nj.us)  
Fax: 609-633-9100

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By: Harlin R. McEwen  
Name: Harlin R. McEwen  
Title: Chairman  
Dated: July 30, 2010

LESSEE

By: Adel W. Ebeid  
Name: Adel Ebeid  
Title: Chief Technology Officer  
Dated: July 20, 2010



***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

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

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Marlin L. Mackey, Cabinet Secretary/CIO, State of New Mexico Dept. of Info. Tech.

---

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

## State of New Mexico

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

- a. Conditioned on first obtaining the consent of the Chief of the Public Safety and Homeland Security Bureau of the FCC (the “Bureau”) to the creation of this Lease, Lessor hereby grants to Lessee the exclusive right to use the Leased Spectrum within Lessee’s jurisdiction during the term of this Agreement and in accordance with the provisions hereof. It is the intent of the Parties that this Agreement create a long term *de facto* transfer spectrum leasing arrangement within the meaning (and subject to the requirements) of 47 C.F.R. Section 1.9030.
- b. The PSST retains all rights and obligations under its FCC license and as a spectrum lessor, as specified in the Communications Laws (as defined in section 5 of this Agreement), and as subject to the terms of this Agreement. Lessee is subject to the rights and obligations under this Agreement and the Communications Laws. Consistent with FCC rules governing long term *de facto* transfer spectrum leases, Lessee is primarily responsible for complying with the FCC Order and the Communications Laws, including all FCC filing requirements related to the Leased Spectrum, and Lessor retains de jure control of its spectrum license.
- c. Lessee shall be responsible to relocate, at its own expense, the operations of any incumbent 700 MHz narrowband licensee in the Lessee’s area of operation, from the Leased Spectrum to the appropriate public safety narrowband spectrum. Alternatively, Lessee agrees to protect such incumbent narrowband operations, either through appropriate engineering measures or geographic exclusion of the narrowband system’s footprint, and to obtain the consent of the incumbent as to its proposed method of protection. Lessee shall also account for narrowband operations in adjacent regions that occur outside of the consolidated narrowband channels, and take all measures necessary to protect such operations from interference.
- d. Lessee’s network shall be fully interoperable with any other regional public safety deployments permitted by a waiver granted by the FCC pursuant to the FCC Order, and with any future nationwide or regional public safety broadband networks, including adherence to any technical requirements adopted by the FCC’s Emergency Response Interoperability Center (“ERIC”), the Bureau, or the FCC, and shall be consistent with other nationally coordinated technical standards and operating requirements that the ERIC, Bureau, or FCC may impose from time to time.
  - i. Lessee must make its network available to all public safety entities eligible under Section 337 of the Communications Act within its jurisdiction.
  - ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

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

## **3. Term and Renewal.**

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

## **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9. Notices**

Lessor

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

Lessee:

Secretary  
State of New Mexico Department of Information Technology  
715 Alta Vista  
Santa Fe, New Mexico 87502-0110  
505 476-3070 (Main number)  
505 827-2159 (FAX)  
Email: marlinl.mackey@state.nm.us

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:


Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/30/2010



STATE OF NEW MEXICO/DEPARTMENT OF INFORMATION TECHNOLOGY

By:

Name: Marlin L. Mackey  
Title: Cabinet Secretary/CIO  
Dated: 8/4/10

  
8/4/10





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

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

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

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

---

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

## State of New York

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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## **2. Scope of Spectrum Usage Rights.**

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

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

## **3. Term and Renewal.**

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

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

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



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

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

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

## **7. Miscellaneous.**

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

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

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

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

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

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

## **9. Notices**

Lessor

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

Lessee:

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

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:

Harlin R. McEwen

Name:

Harlin R. McEwen

Title:

Chairman

Dated:

July 13, 2010

LESSEE

By:

Melodie Mayberry-Stewart

Name:

Dr. Melodie Mayberry-Stewart

Title:

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

Dated:

August 4, 2010



***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

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

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Deputy Chief Charles F. Dowd, New York City Police Department

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

# City of New York

## Standard Lease

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement ("Lease" or "Agreement") is entered into by the Public Safety Spectrum Trust Corporation ("PSST" or "Lessor"), which is licensed by the Federal Communications Commission ("FCC") to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the "Leased Spectrum"), and the City of New York by and through the New York City Police Department ("NYPD") ("Lessee") (each a "Party," and, collectively, "the Parties"). This Lease is subject to the FCC's May 12, 2010 Order, FCC 10-79 ("FCC Order"). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC's rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. [If Lessee is not a state, Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.]

#### 1. Agreement.

- a. Conditioned on first obtaining the consent of the Chief of the Public Safety and Homeland Security Bureau of the FCC (the "Bureau") to the creation of this Lease, Lessor hereby grants to Lessee the exclusive right to use the Leased Spectrum within Lessee's jurisdiction during the term of this Agreement and in accordance with the provisions hereof. It is the intent of the Parties that this Agreement create a long term *de facto* transfer spectrum leasing arrangement within the meaning (and subject to the requirements) of 47 C.F.R. Section 1.9030.
- b. The PSST retains all rights and obligations under its FCC license and as a spectrum lessor, as specified in the Communications Laws (as defined in section 5 of this Agreement), and as subject to the terms of this Agreement. Lessee is subject to the rights and obligations under this Agreement and the Communications Laws. Consistent with FCC rules governing long term *de facto* transfer spectrum leases, Lessee is primarily responsible for complying with the FCC Order and the Communications Laws, including all FCC filing requirements related to the Leased Spectrum, and Lessor retains de jure control of its spectrum license.
- c. Lessee shall be responsible to relocate, at its own expense, the operations of any incumbent 700 MHz narrowband licensee in the Lessee's area of operation, from the Leased Spectrum to the appropriate public safety narrowband spectrum. Alternatively, Lessee agrees to protect such incumbent narrowband operations, either through appropriate engineering measures or geographic exclusion of the narrowband system's footprint, and to obtain the consent of the incumbent as to its proposed method of protection. Lessee shall also account for narrowband operations in adjacent regions that occur outside of the consolidated narrowband channels, and take all measures necessary to protect such operations from interference.
- d. Lessee's network shall be fully interoperable with any other regional public safety deployments permitted by a waiver granted by the FCC pursuant to the FCC Order, and with any future nationwide or regional public safety broadband networks, including adherence to any technical requirements adopted by the FCC's Emergency Response Interoperability Center ("ERIC"), the Bureau, or the FCC, and shall be consistent with other nationally coordinated technical standards and operating requirements that the ERIC, Bureau, or FCC may impose from time to time.
- i. Lessee must make its network available to all public safety entities eligible under Section 337 of the Communications Act within its jurisdiction.



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

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the City of New York which is comprised of New York County, Kings County, Queens County, Richmond County, and Bronx County.

## **3. Term and Renewal.**

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide

license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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

## **9. Notices**

Lessor

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman of the Board  
1101 K St., Suite 8100, Washington, DC 20005

(607) 227-1664  
Email: chiefhrm@pubsaf.com

Lessee:

Deputy Chief Charles F. Dowd  
New York City Police Department  
One Police Plaza, Room 900, New York, New York 10038  
646-610-6765  
charles.dowd@nypd.org

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By: Harlin R. McEwen  
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 7/28/2010

LESSEE CITY OF NEW YORK  
By: Charles F. Dowd  
Name: Charles F. Dowd  
Title: Commanding Officer, NYPD Communications Division  
Dated: 7/16/2010

APPROVED AS TO FORM

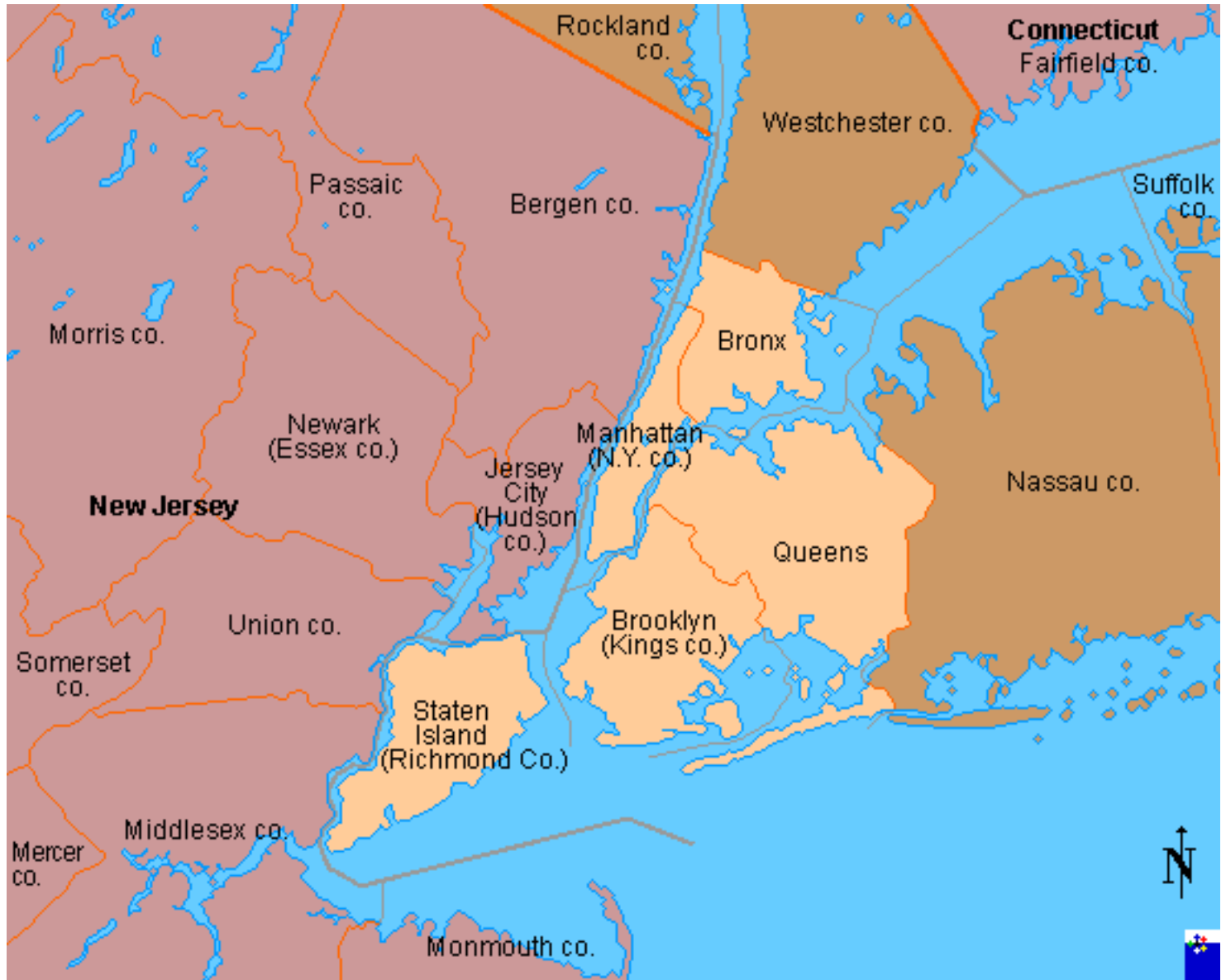
~~ACTING CORPORATION COUNSEL~~

APPROVED AS TO FLAUS

Steven Stein  
~~ACTING CORPORATION COUNSEL~~

JUL 09 2010







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***VIA ELECTRONIC DELIVERY***

August 10, 2010

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

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

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the State of Oregon. On August 6, 2010, the PSST and the State of Oregon submitted an executed lease for approval by the Public Safety & Homeland Security Bureau. That submission included an incorrect version of page 4 of the lease. The PSST and the State of Oregon hereby submit a replacement copy of the executed lease that includes the correct page 4. The only difference between the version filed on August 6, 2010 and the version attached hereto relates to the notice contact information for the State of Oregon.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Matthew Garrett, Director, Oregon Dept. of Transportation  
Steve Noel, Statewide Interoperability Coordinator, Oregon Dept. of Transportation

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

## State of Oregon

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

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

## **3. Term and Renewal.**

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

## **4. Termination.**

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



later than 30 days following termination.

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

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

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

c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or

conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.

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

## **7. Miscellaneous.**

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

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

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

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

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

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

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

## **9 Notices.**

Lessor:

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman  
1101 K St., NW, Suite 8100, Washington, DC 20005  
607-227-1664  
chiefhrm@pubsaf.com

Lessee:

Matthew Garrett  
Director  
Oregon Department of Transportation  
355 Capitol Street  
Salem, Oregon 97301  
503-986-3452  
Matthew.L.Garrett@odot.state.or.us

Lessee Notices:

Steve Noel  
Statewide Interoperability Coordinator  
Oregon Department of Transportation  
3210 Del Webb Avenue NE, Suite 110  
Salem, Oregon 97301  
503-934-6940  
FAX 503-934-6949  
steve.noel@odot.state.or.us

Bureau:  
Federal Communications Commission  
David Furth, Deputy Bureau Chief  
Public Safety and Homeland Security Bureau  
445 12<sup>th</sup> St. SW, Washington, DC 20554  
(202) 418-1300  
(202) 418-2817  
david.furth@fcc.gov

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

LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By: Harlin R. McEwen  
Name: Harlin R. McEwen  
Title: Chairman  
Dated: July 29, 2010

LESSEE: STATE OF OREGON

By: Matthew Garrett  
Name: Matthew Garrett  
Title: Director, Oregon Department of Transportation  
Dated: July 22, 2010



***VIA ELECTRONIC DELIVERY***

August 11, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of Pembroke Pines, Florida**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Charles Dodge, City Manager, City of Pembroke Pines

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



## City of Pembroke Pines, Florida

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

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

#### 1. Agreement.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be the municipal corporate limits of the City of Pembroke Pines, Florida, as more fully described in the attached legal description and maps.

## **3. Term and Renewal.**

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

#### **4. Termination.**

- a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.
- b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

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

- a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).
- b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.
- c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.
- d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).
- e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.
- f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

#### **6. Representations and Warranties.**

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

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



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

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

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

#### **7. Miscellaneous.**

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

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

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

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

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

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

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



## 9. Notices

Lessor

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

Lessee:

Charles Dodge, City Manager  
City of Pembroke Pines  
10100 Pines Blvd.  
Pembroke Pines, FL 33026  
954-431-4884  
954-437-1149  
Email: cdodge@ppines.com

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:

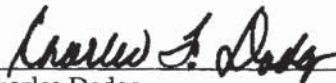
Name: Harlin R. McEwen  
Title: Chairman  
Dated: August 5, 2010



LESSEE

By:

Name: Charles Dodge  
Title: City Manager, City of Pembroke Pines, FL  
Dated:



APPROVED AS TO LEGAL FORM

OFFICE OF THE CITY ATTORNEY

DATED: 8/10/10

## DESCRIPTION OF PEMBROKE PINES CITY LIMITS

Beginning at the intersection of the Westerly Right-of-Way line of the Sunshine State Parkway and the North Right-of-Way line of Pines Boulevard (S.R. 820) said North Right-of-Way line being 60.00 feet North of and parallel with the South line of the North half (N1/2) of Section 13, Township 51 South, Range 41 East; thence along said Right-of-Way line run Westerly through Sections 13 and 14 of said Township and Range to the West line of said Section 14 being also the East line of the South half (S1/2) of the South half (S1/2) of the Northeast quarter (NE 1/4) of Section 15 of said Township and Range; thence run Northerly along said East line to the Northeast corner of said South half (S1/2) of the South half (S1/2); thence Westerly along the North line of said South half (S1/2) of the South half (S1/2) to the East line of the Northwest quarter (NW1/4) of said Section 15; thence Northerly along said East line and along the East line of the Southwest quarter (SW1/4) of Section 10 of said Township and Range to the Northeast corner thereof; thence Westerly along the North line of said Southwest quarter (SW1/4) to the Northwest corner thereof being also the Southeast corner of the Northeast quarter (NE1/4) of Section 9 of said Township and Range; thence Northerly along the East line of said Northeast quarter (NE1/4) to the Northeast corner of said Section 9; thence Westerly along the North line of said Section 9 and along the North line of Sections 7 and 8 of said Township and Range to the Northwest corner of said Section 7 being also the Northeast corner of Section 12, Township 51 South, Range 40 East; thence Westerly along the North line of Sections 7, 8, 9, 10, 11, and 12 of said Township and Range to the Northwest corner of said Section 7 being also the Southeast corner of Section 1, Township 51 South, Range 39 East; thence Westerly along the South line of said Section 1 to the East Line of Tract 59 in said Section 1 extended Southerly; thence Northerly along the East line of Tracts 6, 11, 22, 27, 38, 43, 54 and 59 and their extensions to the North line of said Section 1, being a part of THE EVERGLADES LAND COMPANY'S SUBDIVISION, according to the plat thereof as recorded in Plat Book 2, Page 1, of the public records of Dade County, Florida; thence Westerly along the North line of said Section 1, being also the South line of Section 36 in Township 50 South, Range 39 East to the East line of Tract 58 of said Section 36 extended Southerly; thence Northerly along the East line of Tracts 42, 55, and 58 and their extensions to the Northeast corner of said Tract 42, said tracts also being a part of THE EVERGLADES LAND COMPANY'S SUBDIVISION OF SECTION 36 AND THE SOUTH HALF OF SECTION 25, TOWNSHIP 50 S., RANGE 39 E. as recorded in Plat Book 1, Page 63 of the Public Records of Dade County, Florida, said Northeast corner of Tract 42 also being the Southeast corner of the plat of FRONTIER TRAILS as recorded in Plat Book 97, Page 8, of the public records of Broward County, Florida; thence Northerly along the East line of said plat to the Northeast corner thereof being on the center line of right-of-way for SW 51st Manor as shown on said plat; thence Westerly along said center line to the Northwest corner of said plat; thence Southerly along the West line of said plat to the Southwest corner of said plat being also the Northwest corner of the aforesaid Tract 42; thence Southerly along the West line of the aforesaid Tracts 42, 55, and 58 and their extensions to the South line of said Section 36; thence Westerly along said South line and along the South line of Section 35 of said Township 50 South, Range 39 East to the Southerly extension of the East line of the plat of SELIGMAN - KIA ACRES as recorded in Plat Book 104, Page 40, of the public records of Broward County, Florida; thence Northerly along said East line and its extension to the Southeast corner of Lot 9, Block 4, of said plat; thence Westerly along the South line of said Lot 9 and its extension to the Southeast corner of Lot 9, Block 3 of said plat; thence Westerly along the South line of said Lot 9 to the Southwest corner thereof being also on the West line of said plat; thence Southerly along said West line to a line that is 91.69 feet North of and parallel with the South line of Tract 20 in said Section 35 according to the aforesaid plat of THE EVERGLADES LAND COMPANY'S SUBDIVISION (Plat Book 2, Page 1 Dade); thence Westerly along said parallel line to the centerline of right-of-way of SW 202nd Avenue; thence Northerly along said center line to the Easterly extension of the Southerly boundary of the plat of TRAILS OF EL RANCHO ACRES as recorded in Plat Book 93, Page 34, of the public records of Broward County, Florida; thence Westerly along said Southerly boundary and its extension to the East line of Tract 9, in said Section 35; thence Northerly along the East line of Tracts 8 and 9 and their extensions in said Section 35 and along the East line of Tract 57 and its extension in Section 26, Township 50 South, Range 39 East according to the aforesaid plat of THE EVERGLADES LAND COMPANY'S SUBDIVISION (Plat Book 2, Page 1 Dade)



to a line that is 726.00 South of and parallel with the South right-of-way line of Griffin Road; thence Westerly along said parallel line to a line that is 239.93 feet West of and parallel with the East line of said Tract 57; thence Northerly along said parallel line to the South right-of-way line of Griffin Road; thence Westerly along said South right-of-way line to the West line of said Section 26; thence Southerly along said West line and along the West line of the aforesaid Section 35 to the extension of the Northerly line of Tract 32 in Section 34 of said Township and Range and said Plat (Plat Book 2, Page 1 Dade); thence Westerly along said North line and its extension to the Northwest corner of said Tract 32; thence Southerly along the West line of said Tract 32 and its extension to the center line of the platted roadway abutting the South line of said Tract 32; thence Easterly along said center line to the East line of said Section 34; thence Southerly along said East line to the center line of the platted roadway abutting the South line of Tract 25 in the aforesaid Section 35; thence Easterly along said centerline to the extension of the East line of Tract 40 in said Section 35; thence Southerly along the East line of Tracts 40, 41 and 56 and their extensions to the Northeast corner of Tract 57 of said Section 35; thence Westerly along the North line of said Tract 57 and its extension to the West line of said Section 35; thence Southerly along said West line to the Southwest corner of said Section 35; thence Easterly along the South line of said Section 35 to the Northerly extension of the West line of Tract 2 in Section 2 of said Township 51 South, Range 39 East and said plat of THE EVERGLADES LAND COMPANY'S SUBDIVISION (Plat Book 2, Page 1 Dade); thence Southerly along the West line of Tracts 2, 15, 18, 31, 34, 47, 50 and 63, and their extensions to the South line of said Section 2, being also the North line of Section 11 of said Township and Range; thence Westerly along the North line of Sections 10 and 11 of said Township and Range to the Northwest corner of said Section 10; thence Southerly along the West line of Sections 10, 15, and 22, of said Township and Range to the Southwest corner of the North half (N1/2) of said Section 22; thence Easterly along the South line of the North halves (N1/2)s of Sections 22, 23, and 24 of said Township and Range; thence continue along the South line of the North halves (N1/2)s of Sections 19, 20, 21, 22, 23, and 24 in Township 51 South, Range 40 East; thence continue Easterly along the South line of the North halves (N1/2)s of Sections 19, 20, 21, 22 and 23, of Township 51 South, Range 41 East to the Northwest corner of the Northeast quarter (NE1/4) of the Southwest quarter (SW1/4) of said Section 23; thence Southerly along the West line of said Northeast quarter (NE1/4) to the Westerly Right-of-Way line of the Sunshine State Parkway; thence meandering Northeasterly along said Westerly Right-of-Way line to the Point of Beginning described above.

TOGETHER WITH: Beginning at a point on the Westerly Right-of-Way line of the Sunshine State Parkway and on the South boundary of the Northwest quarter (NW1/4) of Section 23, Township 51 South, Range 41 East; thence run Easterly to the Southeast corner thereof, also being the Northwest corner of the Southeast quarter (SE1/4) of said Section 23; thence on the West boundary of said Southeast quarter (SE1/4) run Southerly to the center line of right-of-way of Southwest 18 Street; thence on said center line of right-of-way run Easterly to the center line of right-of-way of Southwest 66 Avenue; thence on last aforesaid center line of right-of-way of Southwest 66 Avenue run Northerly to a point on the South boundary of the North half (N1/2) of said Section 23; thence on last aforesaid South boundary run Westerly to a point on the West boundary of Hollywood Heights Estates, No. 3, as recorded in Plat Book 39, Page 39, extended Southerly; thence on last aforesaid West boundary run Northerly to a point on the Westerly right-of-way of the Sunshine State Parkway; thence on last aforesaid Westerly right-of-way run Southwesterly to the point of beginning described above.

TOGETHER WITH: Tracts 23 and 24 and adjacent platted 15 feet for an easement or road along the west section line in Section 10, Township 51 South, Range 41 East of "A.J. Bendle Subdivision" as recorded in Plat Book 1, Page 27, of the Public Records of Dade County, Florida.

TOGETHER WITH: The South halves (S1/2)s of Tracts 54, 55, 56 and the adjacent platted roadway along the south section line in Section 3, Township 51 South, Range 40 East of THE EVERGLADES SUGAR & LAND CO. SUBDIVISION as recorded in Plat Book 2, Page 39, of the Public Records of Dade County, Florida.

TOGETHER WITH: The Southeast quarter (SE1/4) of Section 5, Township 51 South, Range 40 East, according to the plat of FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1 as recorded in Plat Book 2, page 17, of the Public Records of Dade County, Florida, excepting therefrom all of Tracts 50, 59, 63 and 64.

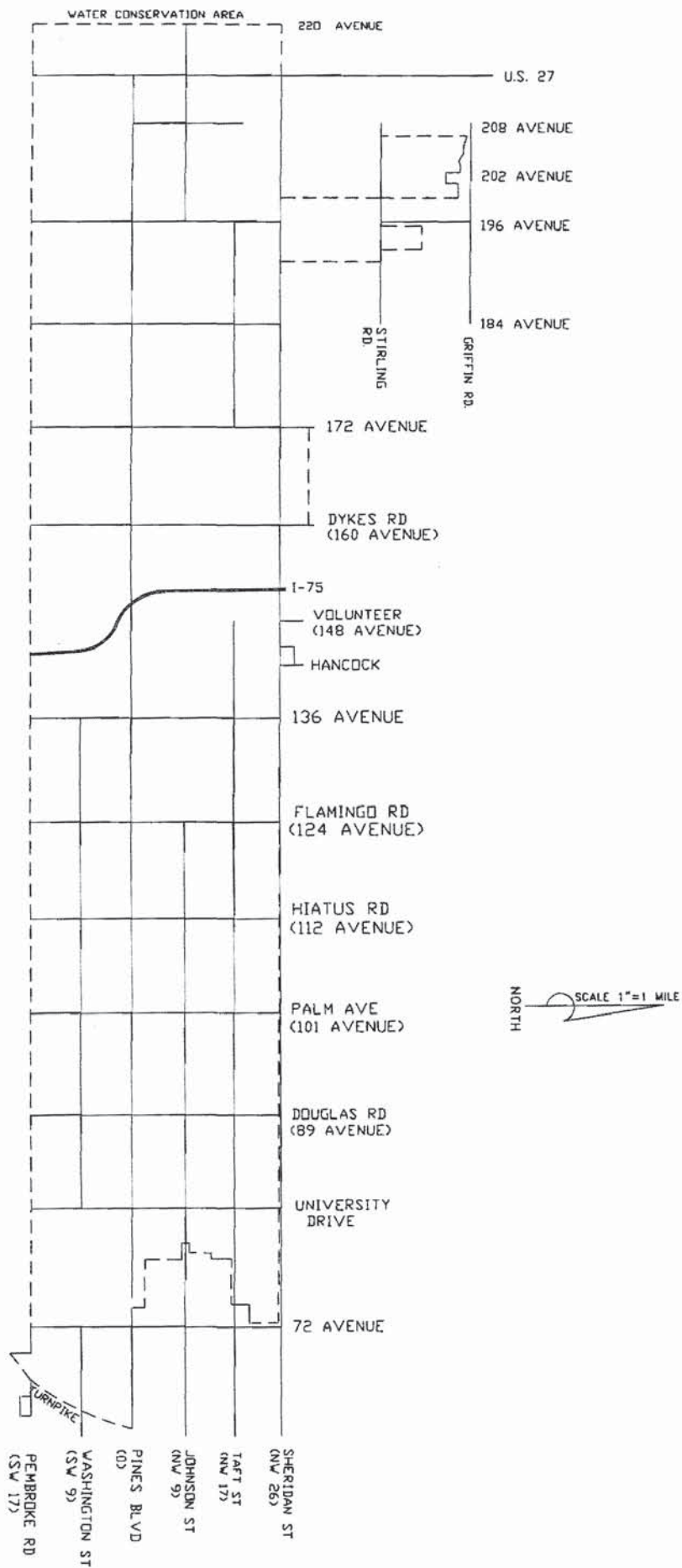
LESS AND EXCEPT FROM ALL THE ABOVE, THE FOLLOWING TWO DESCRIBED PARCELS:

The South 990 feet of the North 1320 feet of the East 175 feet of the North one half (N1/2) of Section 9, Township 51 South, Range 41 East, Broward County, Florida.

Beginning at the South quarter corner of Section 10, Township 51 South, Range 41 East; thence Northerly along the East line of the Southwest one-quarter of said Section 10 to the Northeast corner of the South one-half of the Southwest one-quarter of said Section 10; thence Westerly along the North line of Tract 48, of A.J. Bendle Subdivision as recorded in Plat Book 1, Page 27 of the Public Records of Dade County, Florida, to the Northwest corner of said Tract 48; thence Southerly along the West line of said Tract 48 to a point that is 275 feet North of the South boundary of said Section 10; thence on a line 275 feet Northerly and parallel to the said South boundary of Section 10, run Westerly a distance of 475 feet to a point; thence on a line 475 feet Westerly of and parallel with the West line of said Tract 48, run Southerly a distance of 275 feet to the South boundary of said Section 10; thence on the South boundary of said Section 10, run Easterly to the South quarter corner of said Section 10 and the point of beginning.

Said lands situate, lying and being in Broward County, Florida.







**Broward County, Florida**



***VIA ELECTRONIC DELIVERY***

August 11, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of San Antonio, Texas**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12 Order in the above-referenced proceeding,<sup>1</sup> the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the City of San Antonio, Texas, on behalf of the San Antonio Urban Area Security Initiative ("UASI") Region. The PSST and the City of San Antonio, Texas, on behalf of the San Antonio UASI Region, have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Bart Mulcahy, Assistant Director, Info. Tech. Services Dept., City of San Antonio

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

# San Antonio, Texas, Urban Area Security Initiative Region

## LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and the City of San Antonio, Texas, on behalf of the San Antonio Urban Area Security Initiative (UASI) Region (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2010 Order, FCC 10-79 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.

### 1. Agreement.

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

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

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

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

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



- ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.
  - iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
  - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
  - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
  - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

## **2. Scope of Spectrum Usage Rights.**

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be the San Antonio Urban Area, which is comprised of the City of San Antonio, Bexar County, Comal County, Guadalupe County, Wilson County, Karnes County, Atascosa County, Fri County, Media County, Bandera County, Kerr County, and Gillespie County, and all political subdivisions within those counties in the State of Texas, as depicted in the attached map.

## **3. Term and Renewal.**

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

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

## **7. Miscellaneous.**

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

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

## **9 Notices.**

Lessor:  
Public Safety Spectrum Trust Corporation

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

Lessee:

City of San Antonio  
Bart Mulcahy, Assistant Director  
Information Technology Services Department  
515 S Frio  
San Antonio, TX, 78207  
Phone: (210) 207-7906  
Fax: (210) 207-4040  
Email: Bart.Mulcahy@sanantonio.gov

Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:



Name:

Harlin R. McEwen

Title:

Chairman

Dated:

AUGUST 9, 2010

LESSEE

By:



Name:

Bart Mulcahy

Title:

Assistant Director

Dated:

Aug 09, 2010



San Antonio  
Urban Area Security Initiative  
Coverage Region





***VIA ELECTRONIC DELIVERY***

August 6, 2010

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

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229  
The City of Seattle**

Dear Admiral Barnett:

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

Please contact me directly with any questions.

Respectfully submitted,

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

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau  
Bill Schrier, Chief Technology Officer, City of Seattle

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

## City of Seattle

### LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement ("Lease" or "Agreement") is entered into by the Public Safety Spectrum Trust Corporation ("PSST" or "Lessor"), which is licensed by the Federal Communications Commission ("FCC") to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the "Leased Spectrum"), and City of Seattle ("Lessee") (each a "Party," and, collectively, "the Parties"). This Lease is subject to the FCC's May 12, 2010 Order, FCC 10-79 ("FCC Order"). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC's rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies. [If Lessee is not a state, Lessee shall comply with the requirements and procedures of the FCC Order concerning notification and coordination with the relevant state authority.]

#### 1. Agreement.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **2. Scope of Spectrum Usage Rights.**

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

b. The geographic area of operation within the Lessee's jurisdiction shall be within the existing Seattle City Limits. The City of Seattle has attached a map delineating the specific boundaries along with adjoining jurisdictions.

## **3. Term and Renewal.**

a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide



license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

#### **4. Termination.**

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

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

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

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

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

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

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

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

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

#### **6. Representations and Warranties.**

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

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

#### **7. Miscellaneous.**

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

Lessor

Public Safety Spectrum Trust Corporation  
Harlin R. McEwen, Chairman of the Board  
1101 K St., Suite 8100, Washington, DC 20005

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Lessee:  
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Bureau:

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

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

PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By:   
Name: Harlin R. McEwen  
Title: Chairman  
Dated: 07/30/2010

LESSEE  
By:   
Name: Bill Schrier  
Title: Chief Technology Officer, City of Seattle  
Dated: 2 August 2010



# Jurisdiction Map

City of Seattle

