

T-Mobile EBS Offer Letter
September 5, 2023



CONFIDENTIAL

September 5, 2023

Via Email

Dr. Devin Stephenson
President
Northwest Florida State College

Mr. Christopher Stowers
Executive Director
Northwest Florida State College Foundation, Inc.

Mr. Tanner McKnight
CFO and VP for Business and Operations
Northwest Florida State College

Re: Offer to Purchase 2.5 GHz Licenses WNC885 and WLX931

Dear Sirs,

NSAC, LLC, a subsidiary of T-Mobile US, Inc. ("T-Mobile") and Northwest Florida State College Foundation, Inc. are parties to that certain Educational Broadband Service Long-Term De facto Transfer Lease Agreement dated October 2, 2006; and NSAC, LLC, a subsidiary of T-Mobile, and Northwest Florida State College are parties to that certain Educational Broadband Service Long-Term De facto Transfer Lease Agreement dated October 2, 2006 (Each lease is a "Lease Agreement" and together are the "Lease Agreements". Northwest Florida State College Foundation, Inc. and Northwest Florida State College are each a "Licensee" and together the "Licensees") that has mutually benefited both T-Mobile and the Licensees.

On behalf of T-Mobile, following our negotiations and acknowledging your counter offer, I am prepared to make the following confidential non-binding offer ("Offer") to Licensees regarding your 2.5 GHz Federal Communications Commission ("FCC") licenses under call signs WNC885 and WLX931 (each a "License" and together the "Licenses"). According to the terms and conditions below, and subject to necessary FCC approvals and T-Mobile fiscal approval, a wholly owned subsidiary of T-Mobile is willing to purchase the Licenses from Licensees for One Million, Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) (the "Purchase Price").

The transaction will be structured as an asset purchase agreement ("APA") where T-Mobile and Licensees agree to complete the necessary FCC assignment applications to transfer the Licenses to T-Mobile, and in return, T-Mobile will pay the Purchase Price to Licensees at closing. The closing will occur after the FCC consent to the assignment of the Licenses reaches Final Order (as that term is defined by the FCC), and other standard conditions.

This Offer to complete a transaction upon these general terms (subject to the negotiation, documentation, and execution of a definitive agreement), will remain open for a period of ninety (**90**) days from the date of



12920 SE 38th Street, Bellevue, WA 98006
www.t-mobile.com



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this letter. This Offer, and the financial information within, are provided to Licensees for the exclusive negotiation of a sale with T-Mobile pursuant to the exclusivity provision in the Lease Agreements and shall be kept confidential pursuant to that certain Non-Disclosure Agreement dated July 20, 2023, between T-Mobile and Northwest Florida State College, and that certain Non-Disclosure Agreement dated July 20, 2023, between T-Mobile and Northwest Florida State College Foundation, Inc. To move forward immediately, please complete the attached Notice of Intent and return by email to me at john.wilson1@t-mobile.com. I am also available at 954-275-1460 to discuss any questions or concerns.

Thank you for your consideration and we look forward to working with you.

Sincerely,

DocuSigned by:


3B8578A0DE8B4E2...

John Wilson
Group Project Manager, Technical

cc: Whitney Rutherford
General Counsel
Northwest Florida State College
wrutherford@nwfsc.edu

Todd Gray, Esq.
tgray@graymillerpersh.com





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Notice of Intent

Licenses: WNC885 and WLX931

Licensees: Northwest Florida State College and Northwest Florida State College Foundation, Inc.

Purchase Price: \$1,750,000.00

The undersigned accepts T-Mobile's Offer to purchase the Licenses pursuant to the letter dated September 5, 2023, and agrees to enter into an Asset Purchase Agreement for such Licenses within thirty (30) days of the date of Licensee signature on this Notice of Intent.

By: _____

Name:

Title:

Date:



NWFSC NDA WXL931

T-Mobile USA, Inc.

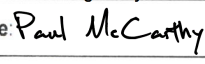
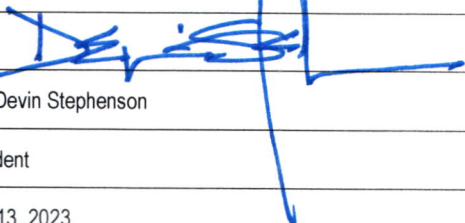
NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**") is by and between T-Mobile USA, Inc. ("**T-Mobile**") and Northwest Florida State College (the "**College**").

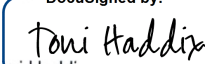
1. **Purpose.** The parties desire to exchange information on a confidential basis related to an actual or potential business transaction concerning 2.5 GHz License(s) (the "**Purpose**"). "Confidential Information" means all non-public information or materials that are marked as confidential upon delivery and are confidential and exempt from disclosure under applicable public records law. However, Confidential Information does not include anything that (i) was previously known to the receiving party without any confidentiality obligation, (ii) is or becomes publicly known through no wrongful act of the receiving party, (iii) was rightfully received from a third party without any confidentiality obligation to that third party, or (iv) was independently developed by the receiving party without using any Confidential Information; or (v) is disclosed in compliance with applicable federal or state public records or open meetings law or other governmental or court order. This Agreement (two pages) is not confidential.
2. **Nondisclosure and Limited Use Obligations.** Each party will protect Confidential Information disclosed by the other party by (i) not disclosing it to third parties, except in compliance with applicable federal or state public records or open meetings law, (ii) preserving its confidentiality with the same level of care it applies to its own similar types of Confidential Information by taking reasonable steps to preserve confidentiality, and (iii) using it only for the Purpose. A party will disclose the other party's Confidential Information only to its employees, affiliates and consultants who need to know such information and in compliance with applicable federal or state public records law or other governmental or court order. A party is responsible for any disclosure or misuse of Confidential Information by its employees, affiliates or consultants.
3. **Legally-Required Disclosures.** A receiving party may, without breaching this Agreement, disclose Confidential Information disclosed by the other party to the extent required to comply with a court order or applicable law or regulation, which includes applicable federal or state public records law. If a receiving party is subject to such a requirement, such as the ongoing requirement under Florida public records law to disclose public records upon request, it will notify the disclosing party as soon as possible and it will cooperate with the non-disclosing party (if requested, and at the non-disclosing party's expense) to seek a protective order or similar protection for the information that the non-disclosing party argues is confidential and exempt from disclosure under public records law. The receiving party will disclose only such information as is legally required and will use commercially reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.
4. **Public Records.** The College is subject to Florida Public Records law, which includes but is not limited to Florida Statutes Chapter 119, and Florida Open Meetings law, which includes but is not limited to Florida Statutes Chapter 286. This Agreement is subject to such law. The terms of this Agreement are subject to Florida Public Records law as are any discussions during a public meeting regarding its terms.
5. **Injunctive Relief.** Each party acknowledges that money damages may not adequately protect the disclosing party against actual or threatened breach of this Agreement and that such breach would result in irreparable harm to the disclosing party. Because of this, a disclosing party may pursue injunctive relief to protect information that it argues is confidential and exempt from disclosure in any court of competent jurisdiction, without having to post bond or guarantee. The party who has breached or threatened to breach this Agreement (and such breach or threatened breach does not include a party complying with applicable public records law) will not raise the defense of an adequate remedy at law. This provision does not alter any other remedies available to either party.
6. **Length of Obligations.** This Agreement takes effect when both T-Mobile and the College have signed and will continue until either party elects to terminate with thirty (30) days prior written notice to the other party. In the event that a definitive agreement is entered into by the parties, and such definitive agreement includes provisions that conflict with provisions contained herein, then the provisions of the definitive agreement control with regard to the subject matter contained therein. This Agreement applies to any Confidential Information disclosed while it is in effect and it will apply to all such Confidential Information for a period of five (5) years from its disclosure, regardless of any termination of this Agreement, except this Agreement will apply indefinitely to trade secret information and personal or customer information.
7. **Other Terms.** Each party will comply with all applicable laws and regulations, including but not limited to, public records, data privacy, sanctioned persons and export, in the disclosure and use of Confidential Information. The disclosing party does not grant, under this Agreement, any rights under its patents, copyrights, trademarks or other proprietary rights. The disclosing party does not make any representation or warranty (whether express, implied or statutory) under this Agreement regarding any Confidential Information it discloses. This Agreement does not create any formal business association between the parties, nor any obligation to buy, sell or otherwise transact in any products or services. If a party transfers this Agreement, including as part of a change of control, it will not disclose Confidential Information disclosed by the other party to its transferee unless it has received the disclosing party's express written approval. This Agreement may be changed only in a writing signed by both parties. The laws of the State of Florida, without reference to conflicts of law principles, and the rules and regulations of the Florida Department of Education govern this Agreement, and any provisions in this Agreement in conflict with the foregoing shall be void and of no effect. If any term of this Agreement is deemed illegal or otherwise unenforceable, that term will be severed and the rest of this Agreement will remain in full force and effect. If any legal proceedings are commenced with respect to any matter arising under or related to this Agreement, the parties agree that the courts of the State of Florida or federal courts located in the State of Florida will have exclusive jurisdiction over each of the parties and over the subject matter of any such proceedings and that the venue of any such action will be in Okaloosa County, Florida, or the United States District Court for the Northern District of Florida. With the exception of any separate agreement that references this Agreement, this Agreement is the entire agreement between the parties on disclosure and use of Confidential Information, and it supersedes any other negotiations, communications or agreements on those topics. Nothing in this Agreement shall be construed or interpreted to be a waiver of the College's sovereign immunity or of the application of § 768.28, Florida Statutes, as amended, or of any other constitutional, statutory, or other protections afforded to the College. Nothing in this Agreement shall be construed as consent by the College to be sued by third parties in any matter arising out of or related to this or any other agreement.

IN WITNESS HEREOF, the Parties have entered into this Agreement as of the date of the second signature below.

T-Mobile USA, Inc.

T-Mobile USA, Inc. Address for notices: 12502 Sunrise Valley Drive Mailstop: VARESA0209-2D187 Reston, VA 20196 Atty: Heather Brown, Director Legal Affairs	Northwest Florida State College Address for notices: General Counsel 100 College Blvd, East Niceville, FL 32578
Signature: 	Signature: 
Name: Paul McCarthy	Name: Dr. Devin Stephenson
Title: Senior Director	Title: President
Date: 7/20/2023 8:27 AM PDT	Date: July 13, 2023

Reviewed by T-Mobile Legal:

DocuSigned by:

Name: Toni Haddix
Title: Principal Corp. Counsel

**Sprint Nextel Educational
Broadband Service
Agreement 2006**



Together with NEXTEL

Sprint Nextel
2000 Edmund Halley Drive
Reston, VA 20191

October 3, 2006

VIA FEDERAL EXPRESS

Okaloosa-Walton College.
Attn: President
100 College Blvd.
Niceville, Florida 32578
(850) 678-5111

To Whom It May Concern:

Enclosed please find the fully executed **EBS Long Term De Facto Transfer Lease Agreement**, dated **October 2, 2006**, between **Okaloosa-Walton College**, formerly known as **Okaloosa-Walton Community College** and **Nextel Spectrum Acquisition Corp.**, for your records.

Upon receipt of the **Lessor and Electronic Filing Information Form**, monthly payments will begin according to the terms of the agreement.

If you have questions during the course of the transaction, please contact me at (703) 433-4531. Thank you for your continued assistance and cooperation.

Sincerely,

Kim O'Dell
Transaction Specialist

Enclosure

Cc: Todd D. Gray
Dow Lohnes PLLC

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

THIS Educational Broadband Service ("EBS") Long Term De Facto Transfer Lease Agreement (the "Agreement") is entered into as of October 2, 2006 (the "Effective Date"), by and between **Okaloosa-Walton College**, formerly known as **Okaloosa-Walton Community College**, an accredited educational institution in the State of Florida (the "Licensee"), and **Nextel Spectrum Acquisition Corp.**, a wholly owned indirect subsidiary of Sprint Nextel Corporation, a Kansas corporation ("Sprint Nextel") (each sometimes referred to as "Party" and collectively as "Parties").

WHEREAS, the Federal Communications Commission ("FCC") has authorized EBS channels D1, D2, D3, and D4 under call sign WLX931 (the "License") to Licensee in the Fort Walton Beach, Florida area (the "Area") as more particularly described on Schedule A;

WHEREAS, any and all spectrum rights now or hereafter authorized pursuant to the License with respect to Channels D1, D2, D3, and D4, and associated J and K channels, are referred to herein collectively as the "Channels" and individually as a Channel;

WHEREAS, the Parties have agreed to enter into this Agreement for Licensee to lease Sprint Nextel excess capacity on the Channels in accordance with the terms and conditions below ("Leasing Arrangement").

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

1. LEASE TERM AND RENEWAL

- (a) **Initial Term.** This Agreement is a long term de facto transfer lease pursuant to provisions of Title 47 of the U.S. Code of Federal Regulations and the policies of the FCC (as each may be amended from time to time, the "FCC Rules"). Subject to Subsection 1(c) or the earlier termination of this Agreement under Section 11, the initial term of this Agreement begins on the Effective Date and ends on the date that is five (5) years from the Effective Date (the "Initial Term").
- (b) **Renewal.** Subject to Subsection 1(c) or the earlier termination under Section 11, on the date that is five (5) years following the Effective Date, and each five (5) years thereafter, this Agreement will automatically renew for up to five (5) additional terms of five (5) years each (each, a "Renewal Term"), for a maximum Agreement duration of thirty (30) years, unless Sprint Nextel notifies Licensee in writing at least six (6) months prior to the end of the Initial Term or any of the first four Renewal Terms, that it declines to renew this Agreement. The terms and conditions of this Agreement apply to each Renewal Term. The Initial Term and all Renewal Terms that go into effect may be referred to collectively under this Agreement as the "Term."
- (c) **Renewal of License and Extension of Agreement.** This Agreement will expire simultaneously with the License unless applications seeking renewal of the License and extension of the FCC authorization for the long term de facto transfer lease of the Channels are filed by the applicable deadlines (or pursuant to appropriate waivers). This Agreement will then continue according to its terms, and use by Sprint Nextel of the Channels will not be interrupted, unless the FCC denies by Final Order, the applications for renewal of the License or the continued long term de facto transfer lease of the Channels. Licensee will file any renewal application(s) for the License and Licensee and Sprint Nextel shall cooperate to jointly file any additional appropriate

Okaloosa WLX931 v. 9-12-06.doc

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application(s) to obtain any required FCC approval(s) for the continuation of this Agreement during and until the expiration of the Term not less than forty-five (45) days prior to the latest date that such application may be filed. The failure to complete filings by the forty-five day deadline listed above will not constitute a material breach under this Agreement if the filings are filed as soon as practicable, and under all circumstances by no later than the latest date that would allow this agreement to continue without interruption. In the event of any filing submitted by one of the Parties, that Party will contemporaneously provide the other Party with a complete copy of such filing. "Final Order" means an order issued by the FCC that is in effect and can no longer be appealed.

2. PAYMENTS

- (a) **Lump Sum Payment.** Sprint Nextel will pay Licensee a one-time upfront fee of **One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00)** ("Upfront Payment"), no later than fifteen (15) days following the later of the date Sprint Nextel receives the completed Exhibit A from the Licensee, and the Effective Date. The Upfront Payment will be refundable to Sprint Nextel on a *pro rata* basis if this Agreement is terminated as a result of a material breach by the Licensee during the first five (5) years of the Initial Term. The Upfront Payment will be refunded, in its entirety, to Sprint Nextel if the FCC does not grant by Final Order the consent to the De Facto Lease Application (as defined in Subsection 9(a)).
- (b) **Monthly Payment.** Commencing with the first full calendar month following the Effective Date and continuing until the earlier of (X) the end of the Term, and (Y) the reinstatement of the Third Party License (as defined below) by Final Order as provided in Subsection 2(c) below (in which case the Monthly Payment amount will be adjusted, as contemplated in such Subsection 2(c)), Sprint Nextel will pay Licensee a monthly fee as specified in Schedule B attached hereto (such payment, whether or not adjusted as specified in Subsection 2(c) and Schedule B, being the "Monthly Payment"). The Monthly Payment will be paid no later than thirty (30) days following the end of each calendar month for which the payment is due. If the Term expires on a date other than the last day of a calendar month, the Monthly Payment for that month will be adjusted on a *pro rata* basis. Notwithstanding anything to the contrary contained in this Agreement, Sprint Nextel's obligation to commence making payments under this Agreement is subject to Licensee completing and delivering to Sprint Nextel the Licensee and Electronic Filing Information Form, attached hereto as Exhibit A. Except with respect to a reduction in geographic or population coverage as a direct result of the reinstatement of the Third Party License (in which case the adjustment of the Monthly Payment will be as specified in Subsection 2(c) and Schedule B), the Monthly Payment will be reduced on a *pro rata* basis (based on MHz, or population, as further provided below) during the Initial Term or any Renewal Term of this Agreement if, with respect to any Channel, (i) the bandwidth of the Sprint Nextel Capacity (in MHz) as contemplated by this Agreement on the Effective Date decreases or (ii) there is a decrease in population resulting from a reduction in the size of the geographic service area (in square miles) ("GSA") of any Channel, as compared to the GSA contemplated by this Agreement on the Effective Date. Notwithstanding anything in the foregoing to the contrary, the reduction in size of EBS lower or upper band segment channels from 6 MHz to 5.5 MHz mandated by the FCC Rules as of the Effective Date concerning the Transition (as defined below) shall not be considered a decrease in Sprint Nextel

Capacity. Furthermore, Sprint Nextel may not use as a basis for a reduction in the Monthly Payment a change in the characteristics of the capacity under the J or K band channels associated with the Channels or the mid-band segment ("MBS") channel if that change is a result of the Transition.

- (c) **Adjusted Monthly Payment.** As of the Effective Date, the Parties acknowledge that EBS Station WNC238 (the "Third Party License") is no longer listed as an active license in the FCC's electronic Universal Licensing System ("ULS"), but if such Third Party License is reinstated, the GSA for the Channels will be reduced. In such event, commencing with the first full calendar month following the FCC's reinstatement of the Third Party License and such reinstatement having become a Final Order, and continuing throughout the remainder of the Term, Sprint Nextel will pay Licensee an adjusted monthly fee as specified in Schedule B as the Monthly Payment.
- (d) Payment Receipt Address.
Okaloosa-Walton College
100 College Blvd.
Niceville, Florida 32578

3. EXCLUSIVITY AND RIGHT OF FIRST REFUSAL

- (a) **Exclusivity.** Except as otherwise permitted pursuant to Subsection 10(c), during the Term, Licensee will not negotiate with or enter into any contract or agreement with any third party to lease, sell, assign, transfer or use any of the capacity of the Channels; provided, however, that Licensee has the ability during the last six months of the Term, and during the last six months of the Initial Term or any Renewal Term if Sprint Nextel has elected not to renew the Agreement in accordance with Subsection 1(b), to negotiate with and contract or agree with any third party with respect to any period following the end of this Agreement, so long as Licensee complies with the ROFR set forth in Subsection 3(b).
- (b) **Right of First Refusal.** Unless this Agreement is terminated by Licensee as a result of Sprint Nextel's material breach or pursuant to Section 11(f), and except with respect to any use of Licensee's Capacity consistent with Subsections 13(b)(ii) and (iii), or any permitted assignment or transfer of control transaction pursuant to Section 10 where the assignee or transferee is also a public institution or agency, a bona fide local private educational institution with students actually enrolled in local classroom instruction (except for any such public or private educational institution that is affiliated with a national EBS licensee), or a public broadcasting station, Sprint Nextel, or an entity designated by Sprint Nextel ("Designee"), will have the right to use, lease or purchase (if Sprint Nextel or the Designee is then eligible to hold an EBS license) some or all of the Channels by matching any acceptable *bona fide* offer received by Licensee from a third party (the "ROFR") during the Term and for a period of three (3) years after the Term (the "ROFR Term"). If Sprint Nextel declines to renew this Agreement pursuant to Section 1(b) above, the ROFR Term provided for in this Section will remain in effect through the Term and for only one (1) year following the end of the Term. Within thirty (30) days following Licensee's determination to accept a *bona fide* third party offer (the "Third Party Offer"), Licensee will notify Sprint Nextel of any Third Party Offer, including (i) the identity of the offeror, (ii) the terms of the offer, and (iii) a true and correct copy of the operative agreement, letter of intent, term sheet or other similar

definitive then-existing documentation relating to the offer. Licensee's notice to Sprint Nextel of the Third Party Offer will constitute an offer by Licensee to Sprint Nextel (or a Sprint Nextel Designee) for the lease, use or purchase of the rights to the Channel(s) impacted by the Third Party Offer on substantially the same terms and conditions set forth in the Third Party Offer. Sprint Nextel will notify Licensee within thirty (30) days following receipt of such notification if Sprint Nextel is exercising its ROFR. If Sprint Nextel fails to exercise its ROFR, Licensee will have sixty (60) days from the expiration of Sprint Nextel's thirty (30) day response period to enter into an agreement with the third party offeror on substantially the same terms and conditions as were offered to Sprint Nextel and supply Sprint Nextel with a fully-executed copy of that agreement. If, within the sixty (60) day period, Licensee does not enter into a binding agreement with the third party offeror on the same terms and conditions as were offered to Sprint Nextel, then Sprint Nextel's ROFR will remain in effect pursuant to the terms stated in this Subsection. If, within the sixty (60) day period, Licensee enters into a binding agreement with the third party offeror on the same terms and conditions as were offered to Sprint Nextel, supplies Sprint Nextel with a fully-executed copy of that agreement, and such transaction is thereafter ultimately consummated, then Sprint Nextel's ROFR will terminate with respect to such transaction; however, the ROFR will remain in full force and effect with respect to any subsequent Third Party Offer with respect to the lease, use or purchase of the rights to the Channels received during the Term and for a period of three (3) years thereafter (one (1) year if Sprint Nextel declines to renew the Agreement pursuant to 1(b)). The terms of any agreement between the Parties (or between Licensee and a Designee) resulting from the exercise of Sprint Nextel's ROFR will be ratified in a separate contract. All materials and information exchanged under the ROFR are subject to the non-disclosure provisions of this Agreement.

- (b) **Bifurcation of Bundled Offer**. If a Third Party Offer bundles or encompasses assets other than Licensee's rights to any of the Channels, the Parties will use good faith efforts to bifurcate the offer into a portion applicable solely to Licensee's rights in any of the Channels, and a remaining portion applicable to the other assets, such that the Parties can ascertain the consideration offered and the terms and conditions applicable to rights related specifically to the Channels. If the Parties agree upon the consideration, terms and conditions of the bifurcated offer, Sprint Nextel (or its Designee) will have the option to exercise its ROFR with respect to the portion of the bifurcated offer applicable to Licensee's rights in any of the Channels. If such third party offer cannot, after using good faith efforts, be bifurcated by the Parties as provided above or if the Parties do not agree upon the consideration, terms and conditions of such bifurcated offer, then Licensee will reject such third party's entire offer.
- (c) **Form of Consideration and Determination of Value**. Subject to Sprint Nextel's rights described in Subsection 3(b), if the whole or any part of the consideration of the Third Party Offer is in a form other than cash, then Sprint Nextel may meet the consideration using cash, comparable consideration, or both, in its acceptance notice. If Licensee does not accept Sprint Nextel's offer of a cash substitute for the non-cash consideration, then Licensee will notify Sprint Nextel in writing of Licensee's estimate of a fair cash substitute within fifteen (15) days after Licensee's receipt of Sprint Nextel's acceptance notice. Licensee's failure to notify Sprint Nextel of its estimate of a fair cash substitute within the prescribed fifteen (15) day period will be deemed an acceptance of Sprint Nextel's cash-substitute offer. If Licensee rejects Sprint Nextel's

cash-substitute offer, then Sprint Nextel will have ten (10) days following receipt of Licensee's rejection to notify Licensee of its election to (i) adopt Licensee's stated cash value, or (ii) submit the valuation of a fair cash substitute for determination by binding arbitration. In the event of arbitration pursuant to this Section 3, the Parties will instruct the arbitrator(s) to assign a reasonable monetary value to any non-cash consideration provided in any Third Party Offer, despite any determination that such non-cash consideration is not readily available in the marketplace to Sprint Nextel, except where the non-cash consideration is the services or participation of a person(s), where the value will be the amount Licensee would reasonably pay such person(s) in the then-current market for the work the person would be performing. In any case where arbitration is invoked, Sprint Nextel's ROFR will remain in effect with respect to the third party offer until thirty (30) days after Sprint Nextel is notified of the arbitrators' decision, during which time Sprint Nextel may revise its notice of exercise of its ROFR to adopt the arbitrators' findings or waive its ROFR with respect to the Third Party Offer. If, within sixty (60) days after the end of Sprint Nextel's thirty (30) day time period to consider the arbitrator's decision, Licensee does not enter into a binding agreement with the third party offeror on the same terms and conditions as contained in the Third Party Offer, then Sprint Nextel's ROFR will remain in effect pursuant to the terms stated in Section 3(b). If, within the sixty (60) day period, Licensee enters into a binding agreement with the third party offeror on the same terms and conditions contained in the Third Party Offer (a fully-executed copy of which will be supplied to Sprint Nextel), then Sprint Nextel's ROFR will terminate with respect to such transaction, but the ROFR will remain in full force and effect with respect to any subsequent Third Party Offer with respect to the lease, use or purchase of the rights to the Channels received during the Term and for the applicable ROFR Term as provided in Section 3(b).

- (d) **Arbitration**. Any arbitration pursuant to this Section will be brought in the city of Pensacola, Florida before the American Arbitration Association (the "AAA") under the AAA's Commercial Arbitration Rules (the "AAA Rules"). Arbitration will be conducted by three (3) arbitrators appointed in accordance with the AAA Rules. Each Party will pay its own attorneys' fees and costs in connection with the arbitration and the Parties will divide equally the fees and costs of the arbitrators, provided, however, that in their award, the arbitrators may reapportion the fees and costs of the arbitrators as the arbitrators deem appropriate.
- (e) **Right to Participate**. If Licensee decides to solicit bids, proposals or offers for the sale, assignment, transfer or use of any part or the whole of the Channels at any time before the third (3rd) anniversary of the end of the Term, then Licensee will provide Sprint Nextel with an opportunity no less favorable in timing or substance than the opportunity provided to any other entity:
- (i) to submit bids, proposals and offers for the Channels;
 - (ii) to receive information with respect to such bids, proposals, offers and counters thereto;
 - (iii) to discuss such information with Licensee;
 - (iv) to counter any such bids, proposals or offers; and

- (v) to be provided with copies of all open bids, proposals, offers, counter-bids and counter-offers promptly after they are received by Licensee.

This right to participate does not limit in any manner, and is in addition to, the ROFR set forth in Subsection 3(b).

4. FREQUENCY BAND TRANSITION

The Parties acknowledge that the Channels are subject to relocation to different frequencies as a result of the Transition Plan adopted by the FCC in WT Docket No. 03-66 (the "Transition"). Sprint Nextel and Licensee will cooperate in the Transition in accordance with FCC Rules to facilitate Sprint Nextel's use of the Sprint Nextel Capacity and Licensee's use of Licensee's Capacity. If Licensee is not the entity initiating or overseeing the Transition of the Channels to alternative frequencies (the "Proponent"), then Licensee will designate and reasonably promote Sprint Nextel or its designee as Proponent, and otherwise support Sprint Nextel's interests in the means and outcome of the Transition to the extent permitted by FCC Rules and consistent with Licensee's Transition rights thereunder. Licensee will consult with Sprint Nextel before adopting, consenting to, or otherwise agreeing to any change of frequencies or characteristics of the Channels other than those changes required by FCC Rules, and will fully involve Sprint Nextel in all of its interactions with any third parties concerning transitions to channel plans allowed as an outcome of the FCC's Transition proceedings. Furthermore, Licensee will not adopt, consent to, agree to, or support any change of frequencies or characteristics of the Channels, except as required FCC Rules, that would impair Sprint Nextel's full and flexible use of the Sprint Nextel Capacity throughout the entirety of the GSA for the Channels. Notwithstanding the foregoing, however, in the event that neither Sprint Nextel nor any third party initiates and/or completes the Transition of the Channels within the time frames specified by the FCC, Licensee may, at its sole option, avail itself of any "self-transition" rights made available pursuant to FCC Rules with respect to the Channels, and Sprint Nextel will reimburse Licensee's reasonable costs thereof.

5. CAPACITY REQUIREMENTS AND USES

- (a) **Licensee's Capacity.** The FCC requires EBS licensees to reserve certain channel capacity for their own use in any spectrum leasing arrangement ("Reservation"). In this Agreement, the capacity of Licensee is referred to as "Licensee's Capacity." When the Channels are being operated in analog mode, Licensee's Capacity is six (6) MHz of spectrum. When the Channels are operated in digital mode, then Licensee's Capacity will be five percent (5%) of the capacity of the Channels. If the FCC reduces the Reservation, Sprint Nextel, at its sole discretion, may elect to decrease Licensee's Capacity in any increment selected by Sprint Nextel and will adjust the Monthly Payment (as already adjusted pursuant to Subsection 2(c) and Schedule B, if applicable) on a *pro rata* basis to account for the resulting increase in bandwidth (measured in MHz) of the Sprint Nextel Capacity. Unless otherwise agreed by the Parties, Sprint Nextel may, at its sole discretion, designate as Licensee's Capacity the equivalent of five percent (5%) of the bandwidth (measured in MHz) of the Channels on any BRS or EBS spectrum licensed to or leased by Sprint Nextel, or any of its affiliates, in the Area.
- (b) **Use of Licensee's Capacity.** Licensee will use Licensee's Capacity to help satisfy its minimum educational use requirements pursuant to FCC Rules ("Minimum Use Requirements"), provided, however, Licensee is not precluded from using other methods to meet the Minimum Use Requirements, including the products and services

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set forth in Subsection 7(c) and any video or audio transmission capacity made available to it by Nextel, to the extent they allow Licensee to meet such requirements. Licensee will not use Licensee's Capacity in any manner that would interfere with Sprint Nextel's use or planned use of the Sprint Nextel Capacity or any other BRS or EBS spectrum, or violate FCC Rules, including rules relating to the prevention of interference to adjacent channels and markets. Licensee will provide Sprint Nextel at least one hundred eighty (180) days advance notice prior to deployment of any facilities which use Licensee's Capacity. Licensee will promptly provide Sprint Nextel with all engineering and other information requested by Sprint Nextel concerning Licensee's planned use of Licensee's Capacity.

- (c) **Sprint Nextel Capacity.** From and after the Consent Date, Sprint Nextel will have the exclusive right to operate and use all the capacity of the Channels except for Licensee's Capacity ("Sprint Nextel Capacity"). Notwithstanding the foregoing, however, Sprint Nextel agrees that Licensee may continue to program the Channels to continue its educational video transmissions until the earlier of (i) the end of the Transition; or (ii) a date specified by Sprint Nextel that is no earlier than fifteen (15) days following notice to Licensee by Sprint Nextel of its intent to use the Channels (except for Licensee's Capacity) prior to the end of the Transition ("Licensee's Interim Use"). Licensee will bear all responsibility, all costs and expenses for all repairs, maintenance and replacement of all equipment used in the operation of the Channels in connection with Licensee's Interim Use.
- (d) **Use of Sprint Nextel Capacity.** Sprint Nextel may use Sprint Nextel Capacity in any manner or format that is in compliance with applicable laws and regulations and for any lawful purpose, including those that may be authorized in the future by the FCC. Sprint Nextel may maximize the use and amount of Sprint Nextel Capacity by employing techniques allowed by the FCC, including but not limited to: digitization, subchannelization and superchannelization or by channel loading and/or channel shifting of Licensee's Capacity as those terms are defined by FCC Rules. Sprint Nextel may also change the medium used for Licensee's Capacity, if allowed by the FCC (such as Internet delivery, or any other delivery system, including the use of spectrum other than BRS or EBS spectrum, that may be authorized in the future by the FCC), provided that Sprint Nextel bears all associated reasonable costs and expenses. Notwithstanding the foregoing, and except as required by Section 6(a), nothing herein will require Sprint Nextel to construct, operate or continue to operate any commercial service utilizing the Channels.
- (e) **Content and Operation.** Sprint Nextel will not be restricted in providing Internet, data, video streaming or voice services over Sprint Nextel Capacity, but will comply with any applicable legal requirements relating to the provision of any such services. Sprint Nextel will not be liable to Licensee for the content, communications, transmissions or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems.
- (f) **Review of Educational Reservation and Use.** During the fifteenth (15th) year of the Term and during each fifth year of the Term thereafter, Licensee will have an opportunity to review its internal educational use requirements in light of changes in educational needs, technology, and other relevant factors (each a "Review" and collectively the "Reviews") and obtain access to such additional services, support and/or equipment as

the parties may agree upon to advance Licensee's educational mission. If at any Review Licensee determines that it has additional needs to meet an increase in its internal educational use requirements, Licensee will provide Sprint Nextel with (i) written notice of such determination, and (ii) reasonable supporting documentation or other proof showing the increase in Licensee's internal educational use requirements and that the increase is not temporary in nature. The Parties will then cooperate to determine the equipment and services necessary to meet increases in Licensee's internal educational use requirements that can be supported by reasonable proof, except that (a) Sprint Nextel will not be required to relinquish any part of the Sprint Nextel Capacity, (b) Sprint Nextel will not be required to provide any products or services not generally offered by Sprint Nextel in the Area, and (c) Licensee will pay for any associated costs and expenses that exceed fifteen (15) percent of the monthly Account Credit (as the term was defined on the Effective Date).

6. EQUIPMENT

- (a) **Operation and Maintenance of Equipment.** Sprint Nextel will, at its expense, operate and maintain the transmission equipment used to operate the Sprint Nextel Capacity ("Sprint Nextel Equipment") and will ensure that operation and maintenance of the Sprint Nextel Equipment complies in all material respects with applicable FCC Rules. Licensee will, at its expense, operate and maintain the transmission equipment, if any, used to operate Licensee's Capacity, but Licensee will be under no obligation to provide or operate such equipment and Licensee will have no obligation or responsibility for equipment, facilities or arrangements currently in place with respect to operations on the Channels. Sprint Nextel will be obligated to either construct and maintain facilities that satisfy the FCC Rules concerning "substantial service" ("Substantial Service Requirements") for the Channels or provide Licensee with the notice described under Subsection 11(f)(2). Licensee will reasonably cooperate with any Sprint Nextel proposal to implement video transmission capabilities, including supply Sprint Nextel with educational programming and make use of any video transmissions of educational programming, provided Licensee does not incur, or is otherwise reimbursed for, any expense associated with the construction and operation of the transmission facilities.
- (b) **Option to Purchase Equipment.** Upon termination of this Agreement for any reason other than breach by Licensee, to the extent required by the FCC Rules in effect at such time, Licensee will have the option to purchase four (4) base stations for use by Licensee on the Channels, provided, however, license shall have no right to any portion of Sprint Nextel's network or any proprietary software or information, or intellectual property. To exercise such option, Licensee must notify Sprint Nextel in writing within fifteen (15) days of the termination of this Agreement and the Parties will use commercially reasonable efforts to consummate the transaction as soon as practicable.

7. BROADBAND AND OTHER SERVICES

- (a) **Preparation for Commercial Services.** Sprint Nextel may, from time to time and as permitted by FCC Rules, and subject to the requirements of Section 6(a), cease all operation of the Channels.
- (b) **Reserved.**

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(c) **Sprint Nextel Products and Services:** Sprint Nextel will provide Licensee with a monthly Account Credit (as defined below) to be used to purchase Sprint Nextel communication products and services:

(i) **Account Credit.** The account credit will be **Five Hundred and 00/100 Dollars (\$500.00)** per month beginning the first full month following the later of (A) the day on which Licensee notifies Sprint Nextel that it desires to use the service, (B) the date Licensee has established a Sprint Nextel customer account through the appropriate commercial channels, (C) the date Licensee has delivered to Sprint Nextel a completed and executed copy of the Licensee and Electronic Filing Information Form attached as Exhibit A, and (D) the Consent Date, and continuing until the end of the Term (the "Account Credit"). The Account Credit will be credited to Licensee's Sprint Nextel customer account by Sprint Nextel no later than thirty (30) days following the end of each calendar month during the Term. The Account Credit for the first month will be adjusted on a *pro rata* basis if the conditions for Licensee to receive the Account Credit are satisfied on a day other than the first day of a calendar month. The Account Credit for the final month will be adjusted on a *pro rata* basis if the Term expires on a day other than the last day of a calendar month. Licensee may use the Account Credit to purchase commercial communication products and services of Sprint Nextel that are generally offered in the Area, in such type and amount as Licensee shall determine, at Sprint Nextel's then commercially available rates for similarly situated entities for such products or services provided that the rates provided to Licensee will not be at a level that will cause the rates under any agreement with the U.S. General Services Administration, or any similar agreement with any governmental or other entity to be altered. Following completion of (A) through (D) above, the Account Credit may be used to purchase video streaming services once such services become available on the Channels. The Account Credit will be applied to any charges and fees incurred in connection with Licensee's account on a monthly basis. If during any month, Licensee incurs charges and fees on its Sprint Nextel customer account in an amount less than the Account Credit, the unused Account Credit may not be transferred, credited to a subsequent month or redeemed for cash, and will revert to Sprint Nextel.

(d) **Student Services.** Following the completion of (A) through (D) in Subsection 7(c)(i), the Parties will enter discussions at a mutually agreeable time related to additional marketing options for Sprint Nextel's provision of services to students in the Area.

8. CHANNEL SWAPS AND INTERFERENCE CONSENTS

(a) **Interference Consents.** Sprint Nextel may, at its expense, enter into any Interference Consents (defined below) with respect to the Channels. The effectiveness of any such Interference Consent entered into by Sprint Nextel, by its terms, may not extend beyond the Term. Licensee will, within thirty (30) days of written request by Sprint Nextel, enter into any Interference Consent with respect to the Channels which is commercially reasonable in the context of the commercial use and development of the Channels and which provides for fair and reciprocal rights and limitations on the use of the Channels and such other spectrum subject to such Interference Consent. Any such Interference Consent executed by Licensee at the request of Sprint may survive indefinitely. Upon the request of Sprint Nextel, Licensee will use reasonable efforts to terminate any then existing Interference Consent to which it is a party, but Licensee will not be required to offer any consideration in connection with those efforts unless such consideration is to be paid for by Sprint Nextel. Sprint Nextel will negotiate and draft the Interference Consents and make any consideration payments due to third parties under the Interference Consents. "Interference Consents" means any agreements or arrangements affecting the use or operation of the Channels, including any agreement or arrangement concerning:

- (i) acceptance of interference or signal strength from a third party's transmitters in excess of the interference or signal strength such third party is entitled to transmit under FCC Rules, or limiting interference or signal strength from transmitters operating on any of the Channels below what is allowed under FCC Rules;
- (ii) the alteration of operating parameters authorized under the license for any Channel or third party channel;
- (iii) the coordination of adjacent market channel use or other matters concerned with the operation of adjacent markets;
- (iv) emission mask and/or emission type; or
- (v) restricting station operations, licensing or location.

(b) **Channel Swaps.** Licensee will complete, submit to the FCC on such date as requested by Sprint Nextel, and prosecute such applications as Sprint Nextel may request to effectuate an exchange of all or a portion of the Channels for the same amount (determined in MHz) of other EBS or BRS spectrum other than guard band spectrum (a "Channel Swap") licensed in the same general geographic area as the Channels ("Swapped Channels"), and thereafter cause such exchange to be consummated, provided that the population residing within the GSA for the Swapped Channels is at least 96.0% of the population residing within the GSA for the Channels as of the date of such exchange and thereafter Licensee is, or would be after giving effect to the Transition, licensed for at least one block of 16.5 MHz of contiguous spectrum in either of the Lower Band Segment or the Upper Band Segment. Effective upon the consummation of a Channel Swap, such Swapped Channels will be considered "Channels" for purposes of this Agreement and any spectrum transferred on behalf of Licensee pursuant to such Channel Swap will no longer be considered "Channels" for purposes of this Agreement.

Sprint Nextel will not reduce Monthly Payments based on a reduction in GSA as a result of a Channel Swap pursuant to this Subsection.

9. APPLICATIONS, AUCTIONS AND FEES

- (a) **Initial Application.** Sprint Nextel and Licensee will cooperate to prepare and file the application for the FCC's approval of the long term de facto transfer lease of the Channels (the "De Facto Lease Application") within fourteen (14) days following the Effective Date. If the FCC denies the De Facto Lease Application or grants it with conditions materially adverse to Sprint Nextel or to Licensee, upon Sprint Nextel's request, Licensee will use its best efforts to secure reversal of the FCC's action. The date of Public Notice of the FCC's consent to the De Facto Lease Application is referred to in this Agreement as the "Consent Date."
- (b) **Application Preparation.** Sprint Nextel will prepare and submit all applications, amendments, petitions, requests for waivers, and other documents necessary for the operation of Sprint Nextel Capacity and permitted to be submitted by Sprint Nextel under the FCC Rules. Promptly, but no later than thirty (30) days following written request by Sprint Nextel, Licensee will submit to the FCC and thereafter prosecute any lawful application, amendment, petition, request for waiver, or any other documents with respect to the Channels required by or is consistent with this Agreement that is requested by Sprint Nextel. Not less than forty five (45) days prior to the date that any such filing is due, Licensee will prepare and submit all applications, amendments, petitions, requests for waivers, and other documents necessary for the maintenance and renewal of the License or required of Licensee to remain eligible under FCC Rules to provide Sprint Nextel Capacity to Sprint Nextel. The failure to complete filings by the forty-five day deadline listed above will not constitute a material breach under this Agreement if the filings are filed as soon as practicable, and under all circumstances by no later than the latest date that would allow this agreement to continue without interruption. Licensee will provide Sprint Nextel with copies of documents submitted pursuant to the preceding sentence at the same time it submits such documents to the appropriate agency. The Parties will cooperate in good faith in the preparation, submission and prosecution of all applications, amendments, petitions, requests for waivers, and other documents necessary to secure any FCC approval, consent or other action required to effectuate the Leasing Arrangement without conditions that are materially adverse to either Party.
- (c) **Application Costs.** Sprint Nextel will, at its own expense, prepare all applications, notices, certificates, exhibits, consent agreements, approvals or authorizations that Sprint Nextel submits to the FCC or requests Licensee to submit pursuant to this Agreement. Sprint Nextel will pay FCC filing fees associated with seeking consent of the Leasing Arrangement and will promptly pay or reimburse Licensee for its reasonable expenses (including legal and/or engineering fees) associated with the evaluation of and activities undertaken by Licensee in response to any request by Sprint Nextel for action by Licensee. Licensee will pay its own costs associated with the renewal of the License and with any other filings to the FCC requested or customarily required of Licensee to remain eligible under FCC Rules to provide Sprint Nextel Capacity to Sprint Nextel (except as such costs relate to Sprint Nextel's status as lessee under this Agreement).

(d) **Regulatory Fees.** Sprint Nextel will pay any regulatory fees imposed by the FCC on Sprint Nextel's use of the Sprint Nextel Capacity under this Agreement upon receipt of notice from the FCC that such fees are due, or upon receipt of at least thirty (30) days advance written notice from Licensee that such fees are due if notice is sent to Licensee.

(e) **Auction Participation.**

(i) If the FCC auctions EBS spectrum (other than the Channels), upon Sprint Nextel's request made at least 120 days in advance of any such auction (or shorter in the event that FCC notice of the auction occurs within 120 days of the auction), Licensee will negotiate in good faith with Sprint Nextel for 60 days to reach an agreement pursuant to which Licensee will participate in the EBS spectrum auction and Sprint Nextel will serve as Licensee's agent and attorney-in-fact to bid for Licensee. Any such agreement will provide that Sprint Nextel will indemnify and hold Licensee harmless from any requirement to pay the U.S. Treasury any amount bid by Sprint Nextel on Licensee's behalf, as well as any liability incurred by Licensee as a result of Sprint Nextel's activities as agent and attorney-in-fact. In the event that Sprint Nextel does not request that Licensee participate in an EBS auction, or the Parties do not reach an agreement on Licensee's participation in the auction, Licensee shall be entitled to participate in any such auction in its own right, at its own expense, without obligation to Sprint Nextel with respect to any such capacity acquired thereby.

(ii) In the event that the FCC permits but does not mandate Licensee to auction any of the Channels, Licensee will decline such invitation to auction unless Sprint Nextel and Licensee mutually agree on the parameters and limitations of Licensee's participation and its effect on this Agreement. In the event that the FCC requires Licensee to auction any of the Channels, the Parties will use best efforts, including participate in the auction, to ensure that the rights of the Parties under this Agreement continue in full force and effect, provided, however, that such participation by Licensee will be at Sprint Nextel's expense.

10. TRANSFERS AND ASSIGNMENTS

(a) **Limited Transfers and Assignments by Sprint Nextel.** Subject to Subsection 16(f), Sprint Nextel may do any of the following, but Sprint Nextel will remain primarily and directly responsible to Licensee for compliance with all its obligations under this Agreement:

- (i) sublease any or all of the Sprint Nextel Capacity;
- (ii) permit any direct or indirect affiliate of Sprint Nextel to use any portion of the Sprint Nextel Capacity; and
- (iii) delegate any or all of its obligations under this Agreement.

(b) **Full Transfers and Assignments by Sprint Nextel.** Subject to Subsection 16(l), Sprint Nextel may assign this Agreement to any third party capable of fully performing the obligations of Sprint Nextel hereunder, provided that:

- (i) Sprint Nextel agrees in writing to assign all its rights and obligations under this Agreement and such third party agrees in writing to assume all of Sprint Nextel's obligations hereunder and acknowledges all of Licensee's rights hereunder;
 - (ii) the assignment and assumption agreement is in a form reasonably acceptable to Licensee;
 - (iii) Sprint Nextel provides Licensee at least thirty (30) days advance notice of such proposed assignment, and upon closing of such assignment, provides notice of the closing of the assignment and a fully executed copy of the assignment and assumption agreement to Licensee.
- (c) **Bv Licensee.** Subject to Sprint Nextel's ROFR, and FCC Rules, Licensee may negotiate and enter into any contract to assign the License to a third party provided that:

- (i) Licensee agrees in writing to assign all its rights and obligations under this Agreement and such third party agrees in writing to assume all of Licensee's obligations hereunder and acknowledges all of Sprint Nextel's rights hereunder, including Sprint Nextel's ROFR (as it applies to any subsequent transfer);
- (ii) the assignment and assumption agreement is in a form reasonably acceptable to Sprint Nextel;
- (iii) Licensee provides Sprint Nextel at least thirty (30) days advance notice of such proposed assignment, and upon closing of such assignment, provides notice of the closing of the assignment and a fully executed copy of the assignment and assumption agreement to Sprint Nextel; and
- (iv) the assignee is not a Competing Entity (defined below).

A "Competing Entity" is any party that (1) offers, provides or delivers a commercially available telecommunications service using EBS or BRS spectrum within the United States of America (a "Competing Service"), (2) owns (except a less than one percent (1%) interest in a publicly traded company) any interest in any entity which provides a Competing Service, (3) has granted, or is affiliated with a party that has granted, to any provider of a Competing Service a global or overarching agreement for the right, option, or preemptive right, to use or otherwise acquire all or any portion of the EBS or BRS spectrum that such party owns or subsequently acquires.

11. TERMINATION OF AGREEMENT

- (a) This Agreement will automatically terminate with respect to the License or affected Channel(s) upon the earlier of:
- (i) an FCC Final Order denying the application for the long term de facto transfer lease of the Channels or the extension of the Term;

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- (ii) the loss or expiration without renewal of the License;
- (iii) an FCC Final Order revoking, terminating or canceling the License; or
- (iv) Sprint Nextel's acquisition of the License or some of the Channels respectively.

In such event, the Monthly Payments (as adjusted pursuant to Subsection 2(c) and Schedule B, if applicable) will be reduced on a *pro rata* basis to account for those Channels or portions thereof which are the subject of such termination.

(b) This Agreement may be terminated by either Party upon material breach of the other Party, if the breaching Party is provided with written notice by the non-breaching Party of the alleged grounds for the breach and allowed a thirty (30) day period for cure following such notice. If any such material breach is not reasonably capable of being cured within such thirty (30) day period, and the breaching party clearly demonstrates ongoing good-faith efforts to cure the breach, then the cure period will be extended an additional one hundred eighty (180) days and this Agreement may not be terminated so long as the breaching Party commences action to cure such breach within the initial thirty (30) day period and thereafter diligently pursues such cure to completion within the additional one hundred eighty (180) days. The Parties agree that the loss of the License will not be deemed a material breach by Licensee if (i) Licensee has met all of its obligations under this Agreement, or any obligations that Licensee has not met have no material causal relationship to the loss; (ii) the loss is not due to the fault of Licensee; and (iii) the Licensee used best efforts to keep in force and renew the License.

(c) Sprint Nextel may terminate this Agreement if, for any reason other than a breach of this Agreement by Sprint Nextel, the Sprint Nextel Capacity falls below 16.5 MHz.

(d) Sprint Nextel may terminate this Agreement on thirty (30) days' written notice to Licensee if:

- (i) the FCC has not granted the application for the long term de facto transfer lease of the Channels and such grant has not become a Final Order within one (1) year of the Effective Date or the FCC grants the application for the lease or any extension but places conditions that are materially adverse to Sprint Nextel; or
- (ii) the FCC Rules are amended subsequent to the Effective Date in a manner that, in Sprint Nextel's sole discretion, materially impairs Sprint Nextel's ability to develop and launch a commercial wireless telecommunications system using BRS or EBS spectrum, or that places additional material obligations on Sprint Nextel as conditions of its use of the Channels in such a system; provided, however, that any such termination shall be exercised no later than 180 days following the date on which the amended FCC Rules become a Final Order.

(e) Licensee may terminate this Agreement if:

- (i) Licensee advises and certifies ("Notice and Certification") to Sprint Nextel in writing that Licensee desires to permanently cease all EBS operations in the Area and Licensee assigns

without any consideration its rights under the License and Channels to a qualified entity designated by Sprint Nextel during the period that is six (6) months following receipt by Sprint Nextel of the Notice and Certification ("Six Months Period"). If Sprint Nextel does not designate a replacement entity for Licensee during the Six Months Period, Licensee will seek the cancellation of the licenses for all of the Channels with the FCC and this Agreement will automatically terminate upon the cancellation by the FCC of such licenses; or

- (ii) Sprint Nextel fails to comply with the Communications Act or the FCC Rules (collectively, the "Governing Rules") governing its use of the Channels; provided that, Licensee's right to terminate under this Sub-section (ii) may be exercised only if (A) Licensee becomes aware of an on-going violation or repeated violations by Sprint Nextel of the Governing Rules, or any other violation of the Governing Rules that might adversely affect Licensee's rights in the License or impose liability on Licensee as licensee of the Channels, and (B) after giving notice to Sprint Nextel of such violation(s), Sprint Nextel does not immediately, in the case of an on-going violation, begin to cure such violation and fully effect such cure within thirty (30) days or such lesser period that the FCC may specifically impose, and in the case of repeated violations, take steps to prevent such violations in the future and fully effect such steps within thirty (30) days or such lesser period that the FCC may specifically impose, such that the violation does not re-occur. If any such failure to comply with the Governing Rules, as provided in (A) or (B) above, is not reasonably capable of being cured within a thirty (30) day period, Sprint Nextel clearly demonstrates ongoing good-faith efforts to cure the breach, and the FCC does not create an earlier deadline, then the cure period will be extended an additional one hundred eighty (180) days and this Agreement may not be terminated so long as Sprint Nextel commences action to cure such breach within the initial thirty (30) day period and thereafter diligently pursues such cure to completion within the additional one hundred eighty (180) days.

(f) If the FCC alters the Substantial Service Requirements applicable to the Channels in a manner that materially increases the burden on Sprint Nextel to satisfy such requirements, then Sprint Nextel no later than ninety (90) days following the change in such Substantial Service Requirements, may notify Licensee that Sprint Nextel is not assuming any obligations to meet such Substantial Service Requirements. Within forty-five (45) days following such notice, Licensee may elect:

- (i) to terminate this Agreement by providing notice thereof, in which case the Agreement will terminate forty-five (45) days after Licensee's notice; or

- (ii) to continue this Agreement in which case neither Party will have liability to the other for the failure to meet such Substantial Service Requirements. If Licensee does not elect to terminate this Agreement pursuant to this Subsection, this Agreement will continue except that neither Party will have liability to the other for the failure to meet such Substantial Service Requirements.

If Sprint Nextel does not provide notice of its intent to not assume the Substantial Service Requirements, Sprint Nextel will take all necessary steps to ensure that such Substantial Service Requirements are satisfied by the deadline established by the FCC.

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

(h) Except as expressly set forth in this Agreement, upon the expiration or termination of this Agreement, the Parties will have no further obligations to each other. Any termination or expiration of this Agreement, regardless of cause, will not release either Licensee or Sprint Nextel from any liability arising from any breach or violation by that Party of the terms of this Agreement prior to the expiration or termination. The general and procedural provisions of this Agreement, which may be relevant to enforcing the obligations or duties of the Parties, will survive the expiration or termination of this Agreement until the obligations or duties are performed or discharged in full.

12. EXPENSES

Except as expressly provided in this Agreement, each Party will pay its own expenses incident to the preparation and performance of this Agreement, and any amendment or modification to this Agreement, including, but not limited to, all fees and expenses of their respective legal counsel and any engineering, accounting and brokerage expenses in connection with this Agreement. Sprint Nextel is entitled to one hundred percent (100%) of the revenue generated from the use of the Sprint Nextel Capacity. Sprint Nextel also retains all right, title and interest in all of the assets operating on, or used in the operation of the Sprint Nextel Capacity, including without limitation all equipment, customers, and proprietary information such as customer or technical information, and Licensee will have no right or interest in or to such assets.

13. COVENANT NOT TO COMPETE

During the Term, Licensee will not directly or indirectly use Licensee's Capacity to compete with Sprint Nextel or its affiliates in any business activity or business or service offerings, or provide a Competing Service in the Area. Nothing in this Section prohibits Licensee from

- (a) subject to Sprint Nextel's ROFR, leasing the capacity of the Channels to a third party for any period after the termination or expiration of this Agreement, or
- (b) at any time:
 - (i) leasing EBS channels or any spectrum held by Licensee to any party for any purpose, other than the Channels,
 - (ii) providing educational services (including but not limited to video and/or data services) to itself or to other schools,

colleges, universities or other governmental or nonprofit entities, or

- (iii) providing educational teleconferencing or other noncommercial activities advancing its educational purposes.

14. CONFIDENTIALITY AND NON-DISCLOSURE

- (a) **Non-Disclosure of Information.** From the Effective Date until the three (3) year anniversary of the expiration or termination of this Agreement, the Parties and their Agents (as defined below) will:

- (i) treat all Information (as defined below) as confidential and proprietary;
- (ii) hold all Information in strict confidence;
- (iii) not disclose any Information to any entity or person (or the fact that the Information has been made available to it); and
- (iv) not use any Information for any purpose other than implementing the terms of this Agreement.

For purposes of this Agreement, "Information" means all non-public information disclosed hereunder or in connection herewith, whether written or oral, that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential, including, without limitation, the terms of this Agreement, all negotiations and discussions relating to this Agreement and the matters subject to this Agreement, and all other information the Parties may supply and/or disclose to each other in conjunction with this Agreement relating to the business of the disclosing Party or its affiliates, whether supplied or disclosed during negotiations with respect to this Agreement, during the Initial Term or any Renewal Term of this Agreement.

- (b) **Certain Exceptions.** Notwithstanding anything to the contrary in Subsection (a) above:

- (i) The term "Information" will not include information that:
 - (A) is information customarily required to be disclosed in an FCC application seeking consent for or renewal of the Leasing Arrangement.
 - (B) is required to be disclosed to the FCC in support of the lease applications or notices submitted to the FCC; provided, however, that the Parties will submit a confidentiality request to the FCC if the FCC seeks from the Parties a copy of this Agreement or any information regarding its terms (other than those terms referred to in (A), above);
 - (C) has been or becomes published or is now, or in the future, in the public domain without breach of this

- Agreement or breach of a similar agreement by a third party;
- (D) prior to disclosure hereunder, is property within the legitimate possession of the receiving Party which can be verified by independent evidence;
 - (E) subsequent to disclosure hereunder, is lawfully received from a third party having rights therein without restriction of the third party's or the receiving Party's rights to disseminate the information and without notice of any restriction against its further disclosure; or
 - (F) is independently developed by the receiving Party through persons who have not had, either directly or indirectly, access to or knowledge of such Information which can be verified by independent evidence.
- (ii) The Parties may disclose Information to their respective affiliates, employees, shareholders, agents, representatives, attorneys and accountants (collectively, "Agents") as required to perform obligations under this Agreement; provided, however, that prior to disclosing any Information to any Agent, the Party disclosing such Information to the Agent will advise the Agent of the Information's confidential nature and the terms of this Section 14 and cause the Agent to abide by the terms of this Section 14.
 - (iii) The Parties may disclose Information as required by applicable law, regulation or regulatory or legal process; provided, however, that if any Party or any of its Agents becomes legally compelled or required to disclose any of the Information, the Party so compelled will, if permitted by applicable law, regulation or regulatory or legal process, provide the other Party with prompt, prior, written notice of such requirement so that such other Party may seek a protective order or other appropriate remedy; provided, further, that if such a protective order or other remedy is not obtained or available, each Party will, and will cause their Agents to, disclose only that portion of the Information that is legally required to be disclosed and to otherwise take all reasonable steps to preserve the confidential nature of the Information.
 - (iv) Sprint Nextel may disclose Information to any third parties which are subject to the terms of a confidentiality agreement prohibiting the further dissemination of such Information beyond that which would otherwise be permitted if such third parties were a party to this Section 14.

15. ASSUMPTION OF LIABILITIES

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

16. FCC-MANDATED LEASING ARRANGEMENT OBLIGATIONS

- (a) Licensee and Sprint Nextel are familiar with the FCC Rules, the Communications Act of 1934, as amended ("Communications Act"), the published policies of the FCC, and will materially comply at all times with all such laws, regulations and policies (the "Governing Rules") as they pertain to the use of the Channels.
- (b) This Agreement may be revoked, cancelled or terminated by the FCC, or Licensee pursuant to the terms of Subsection 11(e)(ii), if Sprint Nextel fails to comply with the Governing Rules.
- (c) Except as set forth in Subsection 9(e), neither Licensee nor Sprint Nextel will represent itself as the legal representative of the other before the FCC or any party, but will cooperate with each other with respect to FCC matters concerning the Licenses and the Channels.
- (d) If the License is revoked, cancelled, terminated or otherwise ceases to be in effect, Sprint Nextel has no continuing authority or right to use the Channels unless otherwise authorized by the FCC.
- (e) This Agreement is not an assignment, sale or transfer of the License itself.
- (f) This Agreement may only be assigned in compliance with its terms and the FCC Rules and will not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the FCC Rules. Licensee will not consent to an assignment unless such assignment complies with applicable FCC Rules.
- (g) Licensee and Sprint Nextel will each retain a copy of this Agreement and make it available upon request by the FCC, in accordance with the confidentiality provisions in Section 14.

17. REPRESENTATIONS AND WARRANTIES

- (a) **Mutual Representations and Warranties.** Each Party represents and warrants to the other that:
 - (i) it is duly organized, validly existing and in good standing under the laws of the state of its formation, and has full power and authority to carry out all the transactions contemplated by this Agreement;
 - (ii) it has taken all requisite organizational action to approve the execution, delivery and performance of this Agreement;
 - (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and general

equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity; and

- (iv) neither the execution nor the delivery of this Agreement nor the performance of the transactions contemplated by it will conflict with, or result in any violation or default under, any term of the articles or certificate of incorporation, organizational documents, or by-laws of such Party, or any agreement, mortgage, indenture, license, permit, lease or other instrument, judgment, decree, order, law or regulation by which the Party or its assets are bound.
- (b) **Sprint Nextel's Representations and Warranties.** Sprint Nextel hereby represents and warrants that it has the requisite capabilities and financial resources to satisfy its obligations set forth in this Agreement.
- (c) **Licensee's Representations and Warranties.** Licensee represents and warrants that:
 - (i) Licensee has obtained, and is in material compliance with all rules that apply to the License and operation of the Channels,
 - (ii) the License is in full force and effect,
 - (iii) to the best of Licensee's knowledge, there are no facts that may warrant the revocation or cancellation of the License,
 - (iv) Licensee is the lawful and exclusive licensee under the License,
 - (v) to the best of Licensee's knowledge, the Channels are not subject to any authorizations other than those listed on Schedule A.
 - (vi) Except as reflected in the public records of the FCC and as listed on Exhibit B, there are no applications pending before the FCC or any other governmental authority that relate in any way to the Channels or the License;
 - (vii) As of the Effective Date, there are no ongoing Interference Consents or other agreements or undertakings that limit or transfer the whole or any part of the GSA of the License or any of the Channels;
 - (viii) there is no complaint, inquiry, investigation or proceeding pending before the FCC, or any other governmental authority or regulatory body, or, to the best knowledge of Licensee, threatened which could result in the revocation, modification, restriction, cancellation, termination or non-renewal of, or other action adversely affecting the License or the Channels, and Licensee knows of no facts that, if brought to the attention of the FCC, a governmental authority or regulatory body, could result in the revocation, modification, restriction, cancellation, termination or non-renewal of, or other action adversely affecting, the License or any of the Channels; and

- (ix) there is no pending or threatened litigation that relates in any way to the Channels or License or that would otherwise prevent, impede, or have the effect of preventing or impeding Licensee from satisfying its obligations under this Agreement.
- (x) Licensee is satisfying the FCC Rules to fulfill its obligations under this Agreement, to maintain the License, and remain an eligible BBS licensee of the License and Channels

18. COVENANTS

- (a) **Sprint Nextel's Covenants.** Throughout the Term, Sprint Nextel will:
 - (i) not take any action prohibited by this Agreement or fail to take any action that it is required to take pursuant to this Agreement which could reasonably be expected to cause the impairment of, or the revocation, cancellation, or suspension by the FCC of, or the FCC's refusal to renew Licensee's License or any portion thereof;
 - (ii) promptly notify Licensee of any event or claim coming to Sprint Nextel's attention pertaining to the License that may adversely affect, or that is adverse to, the License, any of the Channels or Licensee's rights under this Agreement;
 - (iii) not take any action or fail to take any action that it is required to take that would cause any of its representations and warranties under this Agreement to become untrue or incorrect in any respect; and
 - (iv) promptly notify Licensee of any event or circumstance which may reasonably be deemed to constitute a breach of or lead to a breach of Sprint Nextel's representations or warranties under this Agreement or that may cause any such representations or warranties to be materially misleading or untrue had such representation or warranty been made at such time.
- (b) **Licensee's Covenants.** Throughout the Term, Licensee will:
 - (i) use best efforts to obtain and maintain all lawful licenses, permits and authorizations required or desired by Sprint Nextel for the use of the Channels;
 - (ii) take all necessary action required pursuant to this Agreement to be able to meet its obligations to Sprint Nextel under this Agreement and remain eligible under the FCC Rules to hold the License with respect to all of the Channels, including meeting any educational use requirements;
 - (iii) take all necessary steps to renew each License, as required under this Agreement, and not commit any act, engage in any activity prohibited by this Agreement, or fail to take any action that it is required to under this Agreement that could

reasonably be expected to cause the impairment of, or the revocation, cancellation, or suspension by the FCC of, or the FCC's refusal to renew any License or any portion thereof;

- (iv) promptly notify Sprint Nextel of any event or claim coming to Licensee's attention pertaining to the License that may adversely affect, or that is adverse to, the License, any of the Channels or Sprint Nextel's rights under this Agreement;
- (v) not take any action or fail to take any action that it is required to take that would cause any of its representations and warranties under this Agreement to become untrue or incorrect in any respect; and
- (vi) promptly notify Sprint Nextel of any event or circumstance which may reasonably be deemed to constitute a breach of or lead to a breach of Licensee's representations or warranties under this Agreement or that may cause any such representations or warranties to be materially misleading or untrue had such representation or warranties been made at such time.

19. INDEMNIFICATION

- (a) **Sprint Nextel's Duty to Indemnify.** Sprint Nextel will defend, indemnify and hold Licensee and each of its affiliates and their respective partners, members, officers, directors, employees, agents, representatives, successors and assigns harmless from and against any and all liabilities, losses, damages and costs, including reasonable attorney's fees, to the extent resulting from, arising out of, or in any way connected with claims by a third party directly resulting from: (i) any breach by Sprint Nextel of any warranty, representation, agreement or obligation contained in this Agreement, including any breach of the obligation to comply with any legal requirements that apply to Sprint Nextel in conjunction with the provision of services on the Channels; (ii) the installation, maintenance, testing, repair, or physical operation of the facilities utilizing the Channels; or (iii) a breach by Sprint Nextel of an agreement with that third party.
- (b) **Licensee's Duty to Indemnify.** To the extent permitted by state law, Licensee will defend, indemnify and hold Sprint Nextel and each of its affiliates and their respective partners, members, officers, directors, employees, agents, representatives, successors and assigns harmless from and against any and all liabilities, losses, damages and costs, including reasonable attorney's fees, to the extent resulting from, arising out of, or in any way connected with claims by a third party directly resulting from any breach by Licensee of any warranty, representation, agreement or obligation contained in this Agreement. It is understood that the foregoing sentence shall not be deemed to constitute a waiver of sovereign immunity by Licensee.
- (c) **Claims.** In any circumstance in which a Party ("Indemnifying Party") is required by the provisions of this Agreement to indemnify the other Party ("Indemnified Party") with respect to any claim by a third party:
 - (i) the Indemnified Party will give prompt and reasonably detailed written notice of the circumstances to the

Indemnifying Party (including, without limitation, the amount of such claim, or if the amount is not yet liquidated or otherwise determinable, the Indemnified Party's reasonable, good faith estimate thereof); provided, however, that no delay in giving notice will relieve the Indemnifying Party of its obligations unless the delay results in actual prejudice and then only to the extent of the actual prejudice;

- (ii) the Indemnified Party will not make any admission or make or accept any offer of settlement or compromise or consent to entry of any judgment (other than a dismissal on the merits with prejudice without costs) or findings of fact without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld, delayed or conditioned;
 - (iii) unless the counsel selected is reasonably objected to by the Indemnified Party, the Indemnifying Party will be entitled to direct and may assume the defense of any action and select counsel or additional co-counsel for such purpose, at its cost and expense;
 - (iv) after the Indemnifying Party assumes the defense of any action pursuant to clause (iii) of this Subsection, the Indemnifying Party will have no liability for any attorney's fees that are incurred by the Indemnified Party unless the employment of counsel by the Indemnified Party and that counsel's fees have been authorized by the Indemnifying Party;
 - (v) the Indemnified Party will reasonably cooperate with the Indemnifying Party and counsel in the defense of any action, and will provide documents and information and access to witnesses upon reasonable request; and
 - (vi) the Indemnifying Party will not settle any such action without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld), or consent to the entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party a release from all liability with respect to the claim.
- (d) **Survival.** This indemnification Section will survive for one (1) year following the expiration or termination of this Agreement and Sprint Nextel's ROFR (the "Indemnification Period"); provided, however, that this Section will not terminate with respect to any *bona fide* claim as to which the Party to be indemnified has, before the expiration of the Indemnification Period, delivered proper notice in accordance with this Section.

20. NOTICES

(a) Any notice required to be given by one Party to the other under this Agreement will be delivered using a reliable national express overnight delivery service and will be effective upon receipt. All notices will be delivered to the Parties at the following addresses:

If to Sprint Nextel:

Sprint Nextel Corporation
Legal Department
Attention: Spectrum Management
2000 Edmund Halley Drive
Reston, VA 20191
Phone: 703.433.4000

With a copy to:

Sprint Nextel Corporation
Vice President Spectrum Management
2000 Edmund Halley Drive
Reston, VA 20191
Phone:

If to Licensee:

Okaloosa-Walton College
100 College Blvd.
Niceville, Florida 32578
Attn: President
Phone: 850.678.5111

With a copy to:

Todd D. Gray
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D. C. 20036-6802
Phone: 202-776-2571

(b) Either Party may change its addresses for receipt of notice or payment by giving notice of such change to the other Party as provided in this Section.

21. MISCELLANEOUS

- (a) **Force Majeure**. Neither Party will be liable for any nonperformance under this Agreement due to causes beyond its reasonable control that could not have been reasonably anticipated by the non-performing Party and that cannot be reasonably avoided or overcome (each such cause being a "Force Majeure Event"); if:

- (i) the non-performing party gives the other Party prompt written notice of such cause, and in any event, within fifteen (15) calendar days of its discovery; and
 - (ii) such nonperformance will be excused only during the period when the Force Majeure Event occurs, continues to exist and cannot be reasonably overcome.
- (b) **Independent Parties.** None of the provisions of this Agreement will be deemed to constitute a partnership, joint venture, or any other similar relationship between the Parties, and neither Party will have any authority to bind the other in any manner except as specifically indicated in this Agreement. Neither Party will have or hold itself out as having any right, authority or agency to act on behalf of the other Party in any capacity or in any manner, except as may be specifically authorized in this Agreement.
- (c) **Specific Performance.**
 - (i) **Licensee:** Licensee acknowledges that the License and Channels are unique and that Licensee's failure to perform this Agreement will cause Sprint Nextel irreparable damage and injury which cannot be reasonably or adequately compensated for in damages in an action at law. Therefore, Sprint Nextel will be entitled, as a matter of right, to require of Licensee specific performance of all of Licensee's obligations under this Agreement, without a showing of irreparable harm beyond the concession of Licensee in this Subsection, or proof of specific monetary or other damages, but without waiving any right to money or other damages, and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions of this Agreement. Licensee acknowledges that the provisions of this Subsection constitute an essential element of this Agreement, without which this Agreement would not have been executed by Sprint Nextel.
 - (ii) **Sprint Nextel:** Sprint Nextel acknowledges that the License and Channels are unique and that Sprint Nextel's failure to perform certain obligations under this Agreement will cause Licensee irreparable damage and injury which cannot be reasonably or adequately compensated for in damages in an action at law. Therefore, Licensee will be entitled, as a matter of right, to require of Sprint Nextel specific performance of any obligation of Sprint Nextel under this Agreement, which if not performed by Sprint Nextel would result in the loss of the License, and which Licensee cannot have reasonably performed through alternative means, without a showing of irreparable harm beyond the concession of Licensee in this Subsection, or proof of specific monetary or other damages, but without waiving any right to money or other damages, and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened

violation of such a Sprint Nextel obligation under this Agreement. Sprint Nextel acknowledges that the provisions of this Subsection constitute an essential element of this Agreement, without which this Agreement would not have been executed by Licensee.

- (d) **Applicable Law.** The validity, construction and performance of this Agreement will be governed by and construed in accordance with the laws of the State of Florida, without regard to the principles of conflict of laws.
- (e) **Waiver of Jury Trial.** The Parties hereby irrevocably and unconditionally waive, to the fullest extent permitted by applicable law, any right that they may have to trial by jury of any claim or cause of action, or in any legal proceeding, directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort, or any other theory). Each Party acknowledges that the provisions of this Subsection constitute an essential element of this Agreement, without which this Agreement would not have been executed by either Party.
- (f) **Attorneys' Fees.** Except as may otherwise be specifically set forth in this Agreement, if any action is brought on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, the prevailing Party will be entitled to recover from the other its reasonable attorneys' fees and costs, as determined by the court hearing the action.
- (g) **Severability.** If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, unless continued enforcement of the provisions frustrates the intent of the Parties ("Frustration"). If the Parties, after negotiating in good faith, are unable to negotiate a modification of this Agreement to remedy a Frustration, this Agreement may be terminated by the Party that would suffer a materially adverse effect by the Frustration, by giving thirty (30) days prior written notice of such intent to terminate to the other Party. The Parties will continue to negotiate in good faith during such thirty (30) day notice period to attempt to remedy the Frustration and if the Parties negotiate a remedy to the Frustration during such period, the notice provided to initiate such period will no longer be effective to terminate the Agreement.
- (h) **No Waiver.** No delay or failure by either Party in exercising any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right. Failure to enforce any right under this Agreement will not be deemed a waiver of future enforcement of that or any other right.
- (i) **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their successors and permitted assigns and nothing herein expressed or implied will give or be construed to give to any other person or entity any legal or equitable rights hereunder.
- (j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument. Original signatures transmitted by facsimile will be effective to create counterparts.

- (k) **Headings**. The headings and captions used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.
- (l) **Construction**. Each Party has had the opportunity to engage legal counsel to review and negotiate the terms and provisions of this Agreement. This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of this Agreement or otherwise.
- (m) **Complete Agreement**. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter addressed, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, between the Parties or any of their affiliates regarding this subject matter, including that certain ITFS Excess Capacity Lease Agreement dated August 19, 2004 (the "Existing Agreement"), which is hereby terminated by the Parties, except that the indemnification provisions of the Existing Agreement shall continue in force with respect to any activities of the Parties prior to the Effective Date of this Agreement. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of each of the Parties.
- (n) **Cooperation**. The Parties will take such further action and execute such further assurances, documents and certificates as either Party may reasonably request to effectuate the purposes of this Agreement. From time to time, Licensee will execute and deliver to Sprint Nextel an estoppel certificate in a form reasonably requested by Sprint Nextel.


22. INCLUDED SCHEDULES AND EXHIBITS

The following schedules and exhibits are part of this Agreement:


- (a) Schedule A: License and Channel Information;
- (b) Schedule B: Monthly Payment Schedule; and
- (c) Exhibit A: Licensee and Electronic Filing Information Form.

AGREED TO:

Nextel Spectrum Acquisition Corp.

By: 
Name: **Robert Finch, VP**
Title: **Authorized Signatory**

**Okaloosa-Walton College, formerly known as
Okaloosa-Walton Community College**

By: 
Name: **James R. Richburg**
Title: **President**
9-19-06

**SCHEDULE A
LICENSE(S)**

Call Sign	Channel(s)	Licensee	Location	# of Channels Leased	Serv. Type	Grant Date	Expir. Date
WLX931	D1,D2, D3, D4	Okaloosa- Walton Community College	Shalimar, FL	4 (D1, D2, D3, and D4)	ED	8/24/2004	7/23/2013

OWC EBS Lease (WX1931 D) clean 9-12-06

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SCHEDULE B
MONTHLY PAYMENT SCHEDULE
WLX931, FORT WALTON BEACH, FLORIDA

	Monthly Payment	Adjusted Monthly Payment
Year 1	\$2500.00	\$2000.00
Year 2	\$2500.00	\$2000.00
Year 3	\$2500.00	\$2000.00
Year 4	\$2500.00	\$2000.00
Year 5	\$2500.00	\$2000.00
Year 6	\$3000.00	\$2500.00
Year 7	\$3000.00	\$2500.00
Year 8	\$3000.00	\$2500.00
Year 9	\$3000.00	\$2500.00
Year 10	\$3000.00	\$2500.00
Year 11	\$3500.00	\$3000.00
Year 12	\$3500.00	\$3000.00
Year 13	\$3500.00	\$3000.00
Year 14	\$3500.00	\$3000.00
Year 15	\$3500.00	\$3000.00
Year 16	\$4000.00	\$3500.00
Year 17	\$4000.00	\$3500.00
Year 18	\$4000.00	\$3500.00
Year 19	\$4000.00	\$3500.00
Year 20	\$4000.00	\$3500.00
Year 21	\$4500.00	\$4000.00
Year 22	\$4500.00	\$4000.00
Year 23	\$4500.00	\$4000.00
Year 24	\$4500.00	\$4000.00
Year 25	\$4500.00	\$4000.00
Year 26	\$5000.00	\$4500.00
Year 27	\$5000.00	\$4500.00
Year 28	\$5000.00	\$4500.00

OWC EBS Lease (WXL931 D) clean 9-12-06

SPRINT NEXTEL
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Year 29

\$5000.00

\$4500.00

Year 30

\$5000.00

\$4500.00

OWC EBS Lease (WXL931 D) clean 9-12-06

**SPRINT NEXTEL
CONFIDENTIAL AND PROPRIETARY**

EXHIBIT A

LICENSEE AND ELECTRONIC FILING INFORMATION FORM

Instructions:

The following information must be completed in full. All information contained herein will be kept strictly confidential and will be used only in completion of the contemplated transaction.

I. LICENSEE INFORMATION

Please provide the following information for each entity listed as Licensee in the Agreement with Sprint Nextel. Attach a separate sheet if necessary.

Company/Name: Okaloosa-Walton College

Contact: James R. Richburg Title: President

Address: 100 College Boulevard

City/State/Zip: Niceville, FL 32578

Phone: 850-729-5357

Fax: 850-729-5273

E-Mail Address: richburg@owc.edu

Federal, State or Individual SS #: _____

Ownership structure of Licensee:

Educational Institution

(i.e., Corporation, Partnership, Sole Proprietorship, LLC, LLP, Joint Venture, etc.)

State of Organization: Florida

Principal Place of Business for Licensee: Okaloosa-Walton College

If Licensee is a Partnership or Joint Venture, please provide name, address and phone numbers ("contact information") of all other Partners; if the Licensee is a LLC, please provide the contact information for the Managing Member, if an LLP, please provide the contact information of the General Partner. For all other business entities, please provide the contact information for an officer of the company:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

City/State/Zip: _____

City/State/Zip: _____

Phone: _____

Phone: _____

Payment Point of Contact. If payment point of contact within Licensee's organization is different from the contact information above, please provide:

Name: James R. Richburg

Title: President

Address: 100 College Boulevard

City/State/Zip: Niceville, FL 32578

Phone: 850-729-5357

Fax: 850-729-5273

E-Mail Address: richburg@owc.edu

Are you represented by a Broker for this transaction? Circle: YES

NO

If "Yes," please include the following information:

Name of firm: _____

Title: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

E-Mail Address: _____

II. ELECTRONIC FILING INFORMATION

Spectrum leasing transactions are implemented through the FCC's Universal Licensing System database ("ULS") and require coordination by the parties. If Licensee would like Sprint Nextel to complete the licensee portion of the ULS filing seeking consent for the Leasing Arrangement, please refer to "A" below. If Licensee prefers to complete the filing, please refer to "B" below.

A. The FCC requires a licensee to have both an FCC Registration Number ("FRN") and a ULS password to complete transactions on ULS. If Licensee does not have an FRN and would like Sprint Nextel's Regulatory staff to obtain one on its behalf, please provide Licensee's Tax Identification Number ("TIN") or Social Security Number ("SSN"). Sprint Nextel can then obtain an FRN and a ULS password and complete the application(s) with the FCC seeking consent for the Leasing Arrangement. If Licensee has an FRN (which means Licensee will also have been provided with a ULS password), please provide Sprint Nextel with the FRN and ULS password. This information will be kept strictly confidential and used only to complete the application(s) seeking the consent of the FCC for Leasing Arrangement. Licensee will be able to change the password upon completion of the lease application(s).

SSN/TIN (if Applicable) _____

FRN _____

ULS Password _____

B. If Licensee prefers to complete the licensee portion of the application seeking the FCC's consent for Leasing Arrangement, the Sprint Nextel Regulatory Department will be in contact with Licensee

shortly after the execution of the Agreement to coordinate the ULS application filing. Please provide the name and phone number the individual filing Licensee's portion of the application on ULS.

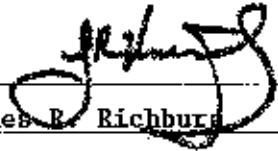
ULS Contact Name: _____

Phone Number: _____

III. AUTHORIZATION AND CERTIFICATION

I hereby authorize Sprint Nextel personnel to complete an application with FCC seeking consent for the lease of the Channels to Lessee, and I certify that all of the information provided herein is true and correct as of the date signed below.

Signature:



Print Name:

James R. Richburg

Title:

President

SCHEDULE B
LICENSEE'S EXISTING EBS EQUIPMENT

(Please list below)

- Transmission Tower (1)
- Combiners (multiple - current number unknown)
- Transmitters (multiple - current number unknown)
- Waveguide system (1)
- Transmitting antenna (1)
- Backup generator (1)
- Television receiving antenna (1)
- Television Receiver (1)
-
-
-
-
-
-
-
-

Prepared by: Ron Walls
Date: September 28, 2006