

## EXPLANATION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

By this application, Norris School District #160, (“Lessor”), and Clearwire Spectrum Holdings III, LLC, a wholly-owned subsidiary of Sprint Corporation (collectively “Sprint” or “Lessee”) (collectively the “Parties”) seek Federal Communications Commission (“Commission”) consent to the long term *de facto* lease of the excess capacity of Lessor’s Educational Broadband Service (“EBS”) channel (collectively “EBS channel”) associated with call sign WNC623 (Channel A2) to Lessee.

Lessor and Sprint are parties to an EBS Long Term *De Facto* Transfer Lease Agreement (“Agreement”), for the use of Lessor’s EBS Station WNC623, whereby Lessor will lease the excess capacity on the A2 channel to Lessee, subject to the Commission’s approval. Sprint operates nationwide wireless and global IP networks to provide a full portfolio of integrated communication services – voice, data, video, wireless, and wireline. Sprint is widely recognized for developing, engineering and deploying innovative technologies and services. Sprint’s qualifications to hold the subject spectrum lease are a matter of public record. As the Commission had consistently concluded, Sprint is financially, technically, and legally qualified to be a Commission lessee and will at all times conduct operations under the Agreement subject to applicable rules and regulations. An FCC Form 602 is on file for Sprint, which provides current ownership information.

Approval of the long term *de facto* transfer leasing arrangement provided for in the Agreement is in the public interest because it will provide Lessee with access to additional geographical coverage for the EBS channel in the Lincoln, Nebraska areas as Lessee continues upgrading and enhancing its 4G LTE broadband network. Additionally, this leasing arrangement will assist Lessor with providing educational service and meeting its educational service requirements.<sup>1</sup> When the Commission adopted new rules for the 2.5 GHz spectrum, it did so to help meet its “goal of providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location.”<sup>2</sup> The FCC significantly revised its rules to encourage

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<sup>1</sup> The Commission recently reaffirmed its commitment to the educational purposes served by EBS spectrum. *See Policies Regarding Mobile Spectrum Holdings*, Report and Order, FCC 14-63, WT Docket No. 12-269, ¶ 123 (rel. June 2, 2014) (“*Spectrum Holdings Report and Order*”).

<sup>2</sup> *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking, FCC 09-70, WT Docket No. 03-66 (rel. September 11, 2009), ¶ 7. (“In 2004, in the BRS/EBS R&O, the Commission adopted a number of revisions.... Of particular relevance here, the Commission applied the spectrum leasing rules established in

“the provision of new technologies and services to the public.”<sup>3</sup> Grant of this lease application will meet these Commission goals and serve the public interest.

As the Commission has set forth, the *de facto* leasing model “...better accommodates recent evolutionary developments in the Commission’s spectrum policies, technological advances, and market place trends, consistent with statutory requirements.”<sup>4</sup> Consistent with the Agreement and the requirements of the Commission’s Rules, Lessee will have *de facto* control of the leased spectrum capacity throughout the lease term, and Lessor will retain *de jure* control over the leased spectrum.

The Commission’s spectrum screen is currently set at 222 MHz, which represents one-third the total amount of spectrum that the Commission had deemed suitable and available for mobile telephony/broadband service.<sup>5</sup>

The instant transaction involves EBS channel A2 with a GSA covering parts of 12 counties in the Lincoln, Nebraska area. In five of the 12 counties, the proposed lease of the GSA for the A2 channel under call sign WNC623, results in a net spectrum gain to Sprint. Sprint’s total attributable spectrum holdings increase as a result of the proposed transaction by newly including the A2 channel in these five counties. However, Sprint’s total attributable spectrum holdings do not exceed the Commission’s wireless spectrum screen threshold. In the remainder of counties Sprint’s attributable spectrum does not change. See Exhibit A.

The only spectrum in this lease is “high-band” (above 1 GHz) spectrum. The *Spectrum Holdings Report and Order* recognized that differences between spectrum bands can be relevant to a determination of the public interest in a given transaction.<sup>6</sup> Additionally, the

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the Secondary Markets proceeding to EBS (formerly ITFS) excess capacity leases for new leases entered into after the effective date of that order (which was January 10, 2005), while grandfathering existing leases under the previous ITFS rules...”).

<sup>3</sup> *Id.* at ¶2.

<sup>4</sup> *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003).

<sup>5</sup> *See Spectrum Holdings Report and Order* at ¶ 251. In the Sprint – Shentel – NTELOS Order, 31 FCC Rcd 3637-38 at ¶15 the Bureau found that the AWS-3 1695-1710 MHz satisfied the standard adopted by the Commission in the *Mobile Spectrum Holdings Report and Order* for inclusion in the spectrum screen and raised the applicable spectrum screen from 194 MHz to 199 MHz on a nationwide basis. With the closing of the 600 MHz incentive auction this further increased the applicable spectrum screen to 222 MHz on a nationwide basis, or approximately one-third of the total spectrum available for the provision of the mobile telephony/broadband services (673 MHz).

<sup>6</sup> *Spectrum Holdings Order* at ¶ 289.

Commission concluded, “applications involving small amounts of high-band spectrum, particularly EBS spectrum, likely would present limited potential for public interest harms.<sup>7</sup> Given the small size of this high-band (above 1 GHz) EBS spectrum lease, Sprint believes that the instant transaction does not trigger the need for additional competitive review.

### **Certifications**

Lessee certifies, pursuant to Section 27.1202 of the Commission’s Rules, that in the event the spectrum were used to provide a multichannel video programming service, it is not directly or indirectly affiliated with, nor does it have any leasing arrangements with a cable television company.

Lessee certifies that it will comply with the technical requirements and interference protection requirements contained in Sections 27.50, 27.55 and 27.1221 of the Commission’s Rules.

Lessor hereby certifies that it will comply with Section 27.1203(b) and (c) of the Commission’s Rules and utilize video, data or voice transmissions to further its educational mission.

### **Term Of Lease**

Pursuant to Section 1.9030(f), the term of the leases for EBS Station WNC623 will become effective between Lessor and Lessee after the FCC has approved the lease application and that grant has appeared on a Public Notice (“Lease Commencement Date”). The lease will continue subject to license renewal and extension of the lease authorization, and also, subject to termination in the event that (i) the license for the Station and the lease authorization granted by the Commission expire by the term without renewal; or (ii) the termination of the Agreement pursuant to the early termination provisions of the Agreement (“Lease Termination Date”). Subject to renewal of the license and renewal of the Agreement for successive renewal terms, the lease will renew for a total possible period of 30 years, to the extent permitted under the Commission’s Rules.

### **Conclusion**

Sprint respectfully submits that the proposed transaction will advance the public interest by enhancing Sprint’s ability to expand its array of commercial wireless mobile services in the Lincoln, Nebraska areas. Therefore, for the reasons set forth above, Sprint respectfully submits that Commission approval of the requested spectrum lease will serve the public interest.

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<sup>7</sup> *Id.* ¶ 289.