

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 16, 2008☐ Consent☒ Regular☐ Workshop☐ Public Hearing**Department: Public Affairs****Submitted By: Public Affairs****Submitted For: Public Affairs**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) A Broadband Radio Service Decommission Agreement with T-Mobile USA, Inc. (T-Mobile Agreement); **B)** An Interlocal Agreement with the School Board of Palm Beach County, Florida, to receive and transmit PBC TV Channel 20 programming (School Board Agreement); and **(C)** A Budget Amendment of \$1,525,673 in the Public Affairs Replacement Frequency fund to accept the T-Mobile decommission payment and establish budget for the payment of: (1) expenses incurred in relation to the T-Mobile Agreement and School Board Agreement; (2) future expenses for the relocation of the frequency Channel 20 utilizes for the transmission of Channel 20 programming; and (3) future expenses for the upgrade of Channel 20's microwave transmit and receive system.

Summary: The County holds a license from the Federal Communications Commission (FCC) to utilize a certain frequency (Incumbent Frequency) to transmit PBC TV Channel 20 programming to various locations within Palm Beach County. Under FCC rules, the County must cease using the Incumbent Frequency, and transition to a new frequency (Replacement Frequency), by 2011. T-Mobile USA, Inc. (T-Mobile) recently requested that the County cease use of the Incumbent Frequency prior to the 2011 deadline in order to eliminate possible interference with T-Mobile operations. The County temporarily ceased use of the Incumbent Frequency on September 2, 2008, pending final approval of the T-Mobile Agreement. The School Board of Palm Beach County (School Board) holds a license from the FCC, and, on September 2, 2008, began transmitting Channel 20 programming to those same locations that the County previously transmitted to utilizing the Incumbent Frequency. Under the terms of the T-Mobile Agreement, T-Mobile agrees to pay the County \$1,525,673.13 for the County to permanently cease operations on the Incumbent Frequency. Continued on Page 3. Countywide (MJ)

Background and Policy Issues: Continued on Page 3

Attachments:

1. Two (2) originals of the Broadband Radio Service Decommission Agreement with T-Mobile USA, Inc.
2. Four (4) originals of the Interlocal Agreement with the School Board of Palm Beach County, Florida, to receive and transmit PBC TV Channel 20 programming.
3. Budget Amendment

Recommended By:
Department Director

Date

Approved By:
Assistant County Administrator

Date

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2009 | 2010 | 2011 | 2012 | 2013 |
|--|-------------|------------|------------|------------|------------|
| Capital Expenditures | \$ -0- | \$0 | -0- | -0- | -0- |
| Operating Costs | 1,525,673 | -0- | -0- | -0- | -0- |
| External Revenues | (1,525,673) | -0- | -0- | -0- | -0- |
| Program Income (County) | -0- | -0- | -0- | -0- | -0- |
| In-Kind Match (County) | -0- | -0- | -0- | -0- | -0- |
| NET FISCAL IMPACT | \$0 | -0- | -0- | -0- | -0- |
| # ADDITIONAL FTE POSITIONS (Cumulative) | 0 | | | | |

Is Item Included in Current Budget? Yes _____ No X
Budget Account No.: Fund _____ Depart: _____ Unit _____
Object _____ Program: _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development and Control Comments:

Channel 20 has received estimates which include inflation for this project that total \$1.5 million. The project should be completed prior to May 2011.

James Dink 12-8-08
OFMB
12/8/08
CN 12/8/08
SH 12/8/08

Ann S. Jett 12/8/08
Contract Development and Control

B. Legal Sufficiency:

[Signature] 12/8/08
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Summary: This amount includes: an incentive payment of \$125,000 to the County for early termination; a \$52,500 payment for costs incurred by the School Board in transmitting Channel 20 programming until December 31, 2009; \$1,221,923.13 for estimated costs to relocate to the Replacement Frequency and upgrade the County's microwave transmit and receive system; and \$126,250 to recover costs for Palm Beach County professional and technical charges. In addition, T-Mobile has already provided the County with approximately \$36,500 worth of equipment to transmit Channel 20 programming to the School Board. The School Board Agreement requires the School Board to transmit Channel 20 programming until December 31, 2009, subject to the payment of \$52,500 by the County. A long-term relocation plan will be brought to the Board to achieve the 2011 FCC-mandated transition to the Replacement Frequency or suitable alternative. Staff recommends, at this time, that the funds obtained from T-Mobile USA be placed in a separate interest bearing account for this specific purpose.

Background and Policy Issues: Pursuant to FCC regulations, T-Mobile, as the entity requesting that the County transition off of the Incumbent Frequency is responsible for the costs the County incurs in relocating to the Replacement Frequency. T-Mobile agrees to pay these estimated relocation costs, and also agrees to provide additional payment to the County as incentive for the County to cease operations on the Incumbent Frequency prior to the 2011 FCC-mandated deadline. As the Replacement Frequency is insufficient for the transmission of Channel 20 programming, staff is investigating other alternatives for long-term transmission of Channel 20 programming.

BROADBAND RADIO SERVICE DECOMMISSION AGREEMENT

This Agreement is executed as of this ____ day of November, 2008 ("Effective Date"), by and between Palm Beach County, Florida, (the "County") and T-Mobile USA, Inc., a Delaware corporation ("T-Mobile") (each a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, the County is authorized to operate a Broadband Radio Service ("BRS") facility ("BRS System") on BRS-1 channel within the 2150 to 2156 MHz band ("Incumbent Band") in the Palm Beach County, Florida area (the "Market") as identified on Schedule A hereto, incorporated by reference herein, pursuant to Federal Communications Commission ("FCC") license No. WPY-38 (the "BRS License");

WHEREAS, the County utilizes the BRS System to transmit the programming of its Cable Channel 20 television station to certain receive sites located within the Market;

WHEREAS, the FCC, pursuant to ET Docket No. 00-258, reallocated and auctioned the 2110 to 2155 MHz frequencies to commercial enterprises for use by emerging technologies known as Advanced Wireless Services ("AWS"), and made provisions for relocating incumbent licensees in the Incumbent Band to the 2496 to 2690 MHz band ("Replacement Band");

WHEREAS, T-Mobile has acquired rights to AWS licenses and intends to construct and operate AWS systems in various geographic markets in accordance with its licenses and applicable FCC rules;

WHEREAS, T-Mobile has determined that its prospective AWS operations in the Market may cause interference to the County's BRS System, or that the County's BRS System may cause interference to T-Mobile's prospective AWS operations, and desires that the County permanently discontinue its BRS System, in accordance with the FCC's stated policies, on the Incumbent Band;

WHEREAS, T-Mobile desires that the County permanently discontinue the use of its BRS System in the Incumbent Band in the Market and is willing to pay the County for timely discontinuance of such operations;

WHEREAS, the County is willing to discontinue the use of its BRS System in the Incumbent Band in the Market, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained hereinafter and for other valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, T-Mobile and the County agree as follows:

1. Definitions: As used in this Agreement, the following terms have the following meanings:

1.1 "AWS" has the meaning set forth in the Recitals to this Agreement.

Attachment # 1

- 1.2 **"BRS"** has the meaning set forth in the Recitals to this Agreement.
- 1.3 **"BRS License"** has the meaning set forth in the Recitals to this Agreement.
- 1.4 **"BRS System"** has the meaning set forth in the Recitals to this Agreement.
- 1.5 **"County"** has the meaning set forth in the Preamble to this Agreement.
- 1.6 **"Decommission Payment"** means the consideration to be paid by T-Mobile to the County to cause the County to permanently discontinue the use of the Incumbent Band for its BRS System in the Market on or before the System Decommission Date as indicated in Schedules B-1 (\$301,760.40) and B-2 (\$464,497.30) for a total Decommission Payment of \$766,257.70. This payment represents the cost of a replacement 2.5 GHz digital broadcast system and STL/TSL link for County.
- 1.7 **"Effective Date"** has the meaning set forth in the Preamble to this Agreement.
- 1.8 **"FCC"** has the meaning set forth in the Recitals to this Agreement.
- 1.9 **"Incumbent Band"** has the meaning set forth in the Recitals to this Agreement.
- 1.10 **"Letter of Understanding"** means the 8/20/08 letter to the Palm Beach County Board of County Commissioners from T-Mobile, a copy of which is attached hereto and incorporated herein as **Exhibit "1"**.
- 1.11 **"Market"** has the meaning set forth in the Recitals to this Agreement.
- 1.12 **"Party" or "Parties"** has the meaning set forth in the Recitals to this Agreement.
- 1.13 **"Premium Payment"**: means the additional consideration to be paid by T-Mobile to the County to cause the County to permanently discontinue the use of Incumbent Band for its BRS System in the Market on or before the System Termination Date which is over and above the Decommission Payment amount. The Premium Payment is \$759,415.43.
- 1.14 **"Replacement Band"** has the meaning set forth in the Recitals to this Agreement.
- 1.15 **"System Decommission Date"**: means the date by which the County permanently ceases operating the BRS System on the Incumbent Band in the Market. The System Decommission Date is contingent upon all of the prerequisites set forth in this Agreement being met in a timely manner.
- 1.16 **"T-Mobile"** has the meaning set forth in the Preamble to this Agreement.
- 1.17 **"Total Compensation"** means the total consideration to be paid by T-Mobile to the County as indicated in Schedule A.

2. **Decommission of Use of Incumbent Band**

2.1 Letter of Understanding. As of the Effective Date of this Agreement, County has temporarily ceased operations of the BRS System on the Incumbent Band, in accordance with the provisions set forth in the Letter of Understanding, a copy of which is attached hereto and incorporated herein as **Exhibit "1"**. It is the intention of the Parties that this Agreement constitutes the "relocation agreement" set forth in the Letter of Understanding.

2.2 Total Compensation Payment. Within five (5) days following the execution of this Agreement, T-Mobile shall pay County the Total Compensation. Payment of the Total Compensation shall be in immediately available funds via check, electronic funds transfer, ACH or other mutually agreed manner of payment. County shall be solely responsible for all tax implications and liabilities related to any payments made by T-Mobile pursuant to this agreement (if any). The date on which the County receives the Total Compensation shall be the System Decommission Date. County is under no obligation to utilize the Total Compensation in any specific manner whatsoever. County has no continuing obligations under this Agreement except for the continuing duty not to recommence operation of the BRS System on the Incumbent Band. So long as T-Mobile successfully satisfies all material obligations under this Agreement, County agrees to waive the right it may have under the FCC's ET Docket No. 00-258 and rules promulgated thereunder and any related proceeding and rules, to relocate its operations back to the Incumbent Band.

2.3 FCC License Modifications. The County shall file with the FCC all forms, applications, requests, authorizations or other documentation necessary to cause the modification and/or cancellation of the BRS License in the Market to delete the Incumbent Band from the BRS License provided, however, that if such FCC filings would adversely affect the County's ability to modify said BRS License to reflect the addition of Replacement Band frequencies, the County may delay such filings until such time as it may file for Replacement Band frequencies. The County has estimated the costs of said services, and said costs are included within the Decommission Payment. The performance by T-Mobile of its obligations under this Agreement shall satisfy, release and discharge in full its obligations under the FCC's ET Docket No. 00-258 and rules promulgated thereunder and any related proceeding and rules.

2.4 County to Bear Costs. The County acknowledges that, following receipt of the Total Compensation, the County shall be solely responsible for the expenses and costs associated with discontinuing the use of the Incumbent Band by the BRS System and for deploying operations on the Replacement Band, including, but not limited to, replacement of transmitters, end user equipment, tower modifications, engineering costs, legal and regulatory consulting, taxes, and other fees.

3. Term and Termination. This Agreement will commence on the Effective Date and will remain in effect until both parties' obligations have been satisfied in their entirety. This Agreement may be terminated and the transactions contemplated by it abandoned: (a) by mutual consent of the Parties evidenced in writing; or (b) by either Party upon material breach of the other Party. Upon any termination of this Agreement or expiration of the Term, all rights and obligations of the Parties under this Agreement shall be extinguished, except that the rights and obligations of the Parties under Section 6 shall survive such termination or expiration.

4. Representations, Warranties and Certain Additional Covenants.

4.1 T-Mobile represents, warrants and covenants, as follows:

(a) T-Mobile is duly organized and validly existing in the jurisdiction of its organization and has all the necessary power and authority to execute, deliver and perform its obligations contemplated by this Agreement.

(b) The execution, delivery and performance by T-Mobile of this Agreement does not conflict with any law, regulation, order, contract or instrument to which T-Mobile is subject or by which T-Mobile is bound.

(c) This Agreement constitutes the valid and binding agreement of T-Mobile, enforceable against it except as enforceability is limited by the laws governing bankruptcy, insolvency and creditors rights and the general principles of equity.

(d) Information provided by T-Mobile is true, complete and accurate to the best of T-Mobile's knowledge and belief.

4.2 The County represents, warrants and covenants, as follows:

(a) The County is duly organized and validly existing in the jurisdiction of its organization and has all the necessary power and authority to execute, deliver and perform its obligations contemplated by this Agreement.

(b) The execution, delivery and performance by the County of this Agreement does not conflict with any law, regulation, order contract or instrument to which the County is subject or by which the County is bound.

(c) This Agreement constitutes the valid and binding agreement of the County enforceable against it except as enforceability is limited by the laws governing bankruptcy, insolvency and creditors' rights and the general principles of equity.

(d) Information provided by the County is true, complete and accurate to the best of the County's knowledge and belief.

(e) The BRS License is in full force and effect, and has not been assigned, suspended, modified or revoked. There is not now pending or threatened by any entity having jurisdiction over the County or the BRS System, including the FCC, any application, petition, objection or pleading which questions the validity or contests the authorizations or their primary status, which, if accepted or granted, would result in the revocation, cancellation, suspension or any materially adverse modification of the BRS License and the County is not aware of any reason that such a proceeding could be commenced.

5. General Provisions.

5.1 Entire Agreement – Waiver. This Agreement and the schedule hereto, constitute the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions or presentations, whether oral or written,

concerning its subject matter. This Agreement may not be modified or changed in whole or in part in any way except in a writing executed by authorized signatories of the Parties. No waiver of any right under this Agreement shall be effective unless in writing by the Party granting such waiver.

5.2 Authorized Signatory; Binding Effect. The signatories hereto represent that they are duly authorized to sign this Agreement on behalf of their respective companies. For T-Mobile, only employees with the title of Vice President or higher are authorized to sign. Each Party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice, and there shall be no presumption that ambiguities shall be construed or interpreted against the drafter. No broker, investment banker, legal adviser, financial advisor or other person is entitled to any broker's, finder's, legal advisor's or other similar fee or commission in connection with this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, assignees and transferees. Excluding parent, subsidiary or affiliated entities, neither Party may assign its respective rights or obligations hereunder without the express written consent of the other Party.

5.3 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original for all purposes but all of which taken together shall constitute only one instrument. Signed facsimile copies of this Agreement shall legally bind the parties to the same extent as original documents.

5.4 Severability. If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law by a court of competent jurisdiction, or any regulatory or governmental entity having jurisdiction over the parties or the subject matter of this Agreement, the remainder of this Agreement shall remain in full force and effect. The failure of either Party to enforce any provision of this Agreement will not constitute a waiver of that Party's rights to subsequently enforce the provision.

5.5 Notices. All Notices and other communications hereunder required to be in writing shall be deemed duly given (1) the same day if personally delivered, (2) the next business day if sent by overnight delivery via a reliable express delivery service by overnight courier. All official notices and other communications related to this Agreement (but not routine communications relating to the implementation of the transactions contemplated in it) must be in writing and will be deemed delivered when addressed to the following:

| | |
|--|---|
| Palm Beach County Director, Public Affairs 301 North Olive Ave, 11 th Floor West Palm Beach, FL 33401 | T-Mobile USA, Inc. Attn: Engineering Spectrum Clearing 12920 SE 38th St. Bellevue, WA 98006 Phone: 425-383-2153 Email: SpectrumClearing@T-Mobile.com |
| With a copy that shall not constitute notice to: County Attorney 301 N. Olive Ave., Suite 601 West Palm Beach, FL 33401 Phone (561) 355-2225 | With a copy that shall not constitute notice to: Director – Legal Affairs FSC ENGR 12920 SE 38th St. Bellevue, WA 98006 Phone: (425) 383-4000 |

5.6 Control. Nothing in this Agreement is intended or shall be construed to grant control of the County's BRS System to T-Mobile or otherwise to prevent the County from exercising its duties and obligations as an FCC licensee.

5.7 Governing Law. The County and T-Mobile expressly agree to submit to the jurisdiction of the state or federal courts of the State of Florida for purposes of any disputes under this Agreement and for enforcement of any judgments arising out of such actions. The construction and performance of this Agreement shall be governed by the laws of the State of Florida without giving effect to the choice of law provisions thereof.

5.8 Specific Performance. The County and T-Mobile acknowledge that the obligations and duties set forth in this Agreement are unique and mere monetary damages would be insufficient in the event of a breach; therefore, notwithstanding anything herein to the contrary, if the County or T-Mobile fails to perform any of its obligations under this Agreement, the aggrieved party shall have the right, in addition to all other rights or remedies, to specific performance of the terms hereof.

5.9 Time of the Essence. Both Parties acknowledge and agree that time is of the essence in the performance of this Agreement.

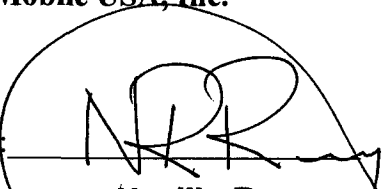
6. Confidentiality. County will not issue any press releases regarding this Agreement, its terms, the negotiations that lead to this Agreement, or the nature of any relationship between the parties, nor will the County use any trade name, trademark, service mark or logo of T-Mobile in any advertising, promotions, press release or otherwise, without T-Mobile's prior written consent, which may be withheld in its sole discretion.

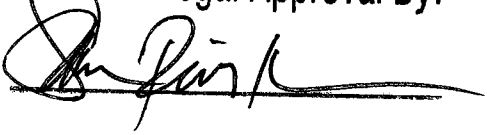
7. Further Assurances. From time to time hereafter, each Party will execute and deliver, or will cause to be executed and delivered, such additional instruments, certificates or documents, and will take all such actions, as the other Party may reasonably request, for the purpose of implementing and/or effectuating the provisions of this Agreement or to ensure that the Incumbent Band are available for use in the Market in the operation of the T-Mobile AWS systems and that the Replacement Band are available to the County.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representative have executed this Agreement effective as of the Effective Date.

T-Mobile USA, Inc.

By: 
Name: **Neville Ray**
Sr. Vice President
Title: **Engineering Operations**
Date: 11/14/08

T-Mobile Legal Approval By: 

ATTEST:
SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

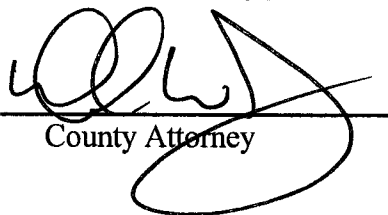
By: _____, Chair

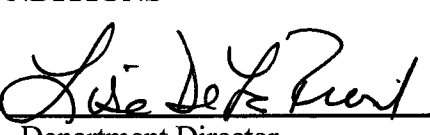
JOHN F. KOONS
CHAIRMAN

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: 
County Attorney

By: 
Department Director

Schedule A – Total Compensation

| T-Mobile Link ID | Market | Call Sign | BRS Channel | Total Compensation |
|---------------------|--------|-----------|----------------|-----------------------|
| 21-09188 | FL | WPY38 | 1 | \$1,525,673.13 |

Schedule B-1 - New System Design (WPY38)

| Palm Beach County | | |
|--|---------------------|--------------|
| New System Design- 2.5 GHz Digital Broadcast | | |
| T-Mobile Link ID: | Call Sign: WPY38 | |
| | Description | Cost |
| Radios (2.5 GHz digital broadcast system) | Axcera 5726 | \$142,649.40 |
| Antennas (12 bay carotid) | Axcera HMD12_C-W | \$25,058.82 |
| Antenna systems (waveguide, connectors, etc.) | Eliptical Waveguide | \$43,903.02 |
| Backup AC / UPS | APC SYA8K16P | \$10,786.67 |
| Installation fees | | \$55,101.73 |
| Professional fees | | \$8,136.92 |
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| Notes: This quote is firm price for the purpose of identifying cost of replacement of the 20-Mile Bend analog broadcast system with digital broadcast system on a turnkey deal. The STL/TSL links from PBC Courthouse to 20-Mile Bend must also be replaced due to synchronization and timing issues. The effort includes replacement of broadcast transmitters, broadcast antennas, EW17 waveguide with EW20 waveguide, Microwave Transmitters and Receivers on the STL/TSL links and digital to analog conversion units. | | |
| | | |
| | Subtotal | \$285,636.55 |
| | Taxes | \$16,123.85 |
| | Total | \$301,760.40 |

Schedule B-2 - New System Design (WPY38)

| Palm Beach County | | |
|--|------------------|--------------|
| New System Design- STL/TSL link | | |
| T-Mobile Link ID: | Call Sign: WPY38 | |
| | Description | Cost |
| Radios (hot standby w/ encoders and decoders) | MRC DRP068DH0AH | \$248,359.78 |
| Single carrier modem | MRC SCM4000-TRE | \$126,285.71 |
| Backup AC / UPS | APC SUA1500RM2U | \$1,260.00 |
| Installation fees | | \$45,064.81 |
| Professional fees | | \$16,273.85 |
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| Notes: This quote is firm price for the purpose of identifying cost of replacement of the 20-Mile Bend analog broadcast system with digital broadcast system on a turnkey deal. The STL/TSL links from PBC Courthouse to 20-Mile Bend must also be replaced due to synchronization and timing issues. The effort includes replacement of broadcast transmitters, broadcast antennas, EW17 waveguide with EW20 waveguide, Microwave Transmitters and Receivers on the STL/TSL links and digital to analog conversion units. | | |
| | | |
| | Subtotal | \$437,244.15 |
| | Taxes | \$27,253.15 |
| | Total | \$464,497.30 |

EXHIBIT 1
LETTER OF UNDERSTANDING



T-Mobile USA, Inc.
12920 SE 38th Street, Bellevue, WA 98006

August 20th, 2008

Palm Beach County Board of Commissioners
301 N. Olive Ave, Suite 401
West Palm Beach, FL 33401

RE: Letter of Understanding regarding AWS Spectrum Relocation

Dear Palm Beach County Board of Commissioners:


This letter confirms the mutual understanding of T-Mobile USA, Inc. ("T-Mobile") and the Palm Beach County Board of Commissioners ("County"), (collectively the "Parties", or individually, a "Party"), regarding the County's discontinuance of its use of its 2.1 GHz frequencies and relocation to 2.5 GHz frequencies.

As you are aware, T-Mobile is authorized to operate certain 2.1 GHz AWS frequencies in the Palm Beach Area ("Area") and the County is authorized to operate certain 2.1 GHz BRS frequencies within the Area. The Federal Communications Commission ("FCC") has made replacement frequencies in the 2.5 GHz band available to the County.

T-Mobile and Palm Beach County are actively engaged in arriving at a comprehensive relocation agreement that consists of both an interim solution to broadcast County programming on the BRS system owned and operated by the School District of Palm Beach County ("SDPBC") and a permanent solution for the County to relocate to the 2.5 GHz band.

Recognizing that these negotiations are likely to stretch beyond T-Mobile's target launch date for AWS services in the Area, T-Mobile has asked the County to turn off its BRS system once the County's programming is being successfully broadcast by the SDPBC's BRS System. T-Mobile understands that the County's good faith action of turning its system off pending a completed relocation agreement does not jeopardize the County's primary status on its BRS license. Furthermore, T-Mobile agrees that in the event a relocation agreement is not reached between the parties, the County may resume its BRS operations on the 2.1 GHz channel without objection by T-Mobile.

Sincerely,



Dave Mayo
VP, Engineering Finance
T-Mobile USA

Attachment # 2

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is made the ____ day of _____, 2008, between the School Board of Palm Beach County, Florida, a corporate body politic pursuant to Article IX, Section 4(b) of the Constitution of the State of Florida (hereinafter "School Board"), and Palm Beach County, a political subdivision of the State of Florida, (hereinafter "County"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes. The School Board and the County are each sometimes referred to as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the County holds a license from the Federal Communications Commission ("FCC") to broadcast in the 2150 to 2156 MHz band under call sign WPY38 ("Incumbent License"), and utilizes the Incumbent License to transmit County Channel 20 programming ("C20 Programming") to various locations within Palm Beach County ("Receive Sites"); and

WHEREAS, the FCC has required that the County, along with other incumbent users within the 2150 to 2156 MHz band, cease use of the band and transition to new frequencies located at or near 2496 MHz ("Transition Frequency"); and

WHEREAS, in order to eliminate possible interference, a third-party, T-Mobile USA, Inc., has requested the County to cease use of the Incumbent License as soon as possible; and

WHEREAS, because of technical limitations of the Transition Frequency, the County is currently unable to utilize the Transition Frequency to transmit C20 Programming to the Receive Sites, and the County is currently investigating alternative methods of transmitting C20 Programming; and

WHEREAS, the School Board currently broadcasts six (6) channels of digital programming within the 2608 to 2614 MHz band pursuant to a lease of those frequencies under call sign WMI841 from a subsidiary of Sprint Nextel Corporation ("Sprint"); and

WHEREAS, after the transition of the 2.5 GHz band in the West Palm Beach-Boca Raton, Florida area (Basic Trading Area No. 469), the School Board's lease with Sprint will expire and the School Board will be licensed within the 2608 to 2614 MHz band under call sign KHU90.

WHEREAS, the School Board is willing to broadcast the C20 Programming within the 2608 to 2614 band subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual representations, terms, and

covenants hereinafter set forth, the Parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and a correct representation of the intention of the Parties.
2. **Representative/Monitoring Position.** The County's representative/contract monitor during the term of this Agreement shall be Lester Williams, Station Manager, Channel 20, whose telephone number is (561) 355-2282. The School Board's representative/contract monitor during the term of this Agreement shall be Judith Garcia, Manager, The Education Network, whose telephone number is (561) 738-2702.
3. **Effective Date/Term.** This Agreement shall take effect upon its respective approval by the County and School Board. The initial term of this Agreement shall commence upon the date of execution of the Agreement by the County ("Effective Date") and shall terminate on December 31, 2009. This Agreement may be extended for four additional one-year terms, upon the same terms and conditions as herein provided, by written agreement of both of the Parties to this Agreement prior to expiration of the initial term of this Agreement or any renewal thereof. Following the expiration of the initial term of this Agreement, the School Board may increase the Broadcast Fee (as defined below) to account for cost increases to be incurred in broadcasting the C20 Programming. Within fifteen (15) days following receipt of notice that the County wishes to exercise a renewal option for an additional year, the School Board shall provide the County with the updated amount of the Broadcast Fee.
4. **Compensation.** The County acknowledges that School Board will incur costs associated with receiving and broadcasting the C20 Programming, including but not limited to, overtime by School Board employees and increased utility consumption. In consideration of School Board's undertakings, County shall pay to School Board, for costs incurred during the initial term of this Agreement, an amount equal to Fifty Two Thousand Five Hundred (\$52,500.00) ("Broadcast Fee") to cover School Board costs throughout the initial term of this Agreement, said costs to be paid to the School Board within thirty (30) days of the Effective Date. In the event that School Board shall not have received the Broadcast Fee within thirty days of the Effective Date of this Agreement, School Board shall have the right to cease broadcasting the C20 Programming and to terminate this Agreement. The County shall pay the Broadcast Fee annually in advance for any renewals of this Agreement within thirty days of the Effective Date of any such renewals.
5. **School Board Responsibilities.** As of the Effective Date of this Agreement, the School Board shall commence the transmission of C20 Programming to the geographic service area associated with channel E2 under call sign WMI841. When the transition of the 2.5 GHz band in the West Palm Beach-Boca Raton, Florida area is complete, the School Board will transmit C20 Programming to the geographic service area associated with channel E4 under call sign KHU90 and will continue such transmission until the expiration of this Agreement. Subject to compliance with FCC rules and legal requirements and subject to any temporary outages that may occur to accommodate maintenance and repairs of the School Board's transmission facilities and/or the transition of the 2.5 GHz band, the School Board shall continuously transmit C20 Programming as received from the County, 365 days/year, 7 days per week, 24 hours a day. The School Board's obligation to transmit C20 Programming is contingent upon the County providing the C20 Programming to the School Board in a format that is compatible with the School Board's digital transmission facilities used to broadcast within the 2608 to 2614 MHz band ("Transmit Equipment").
6. **County Responsibilities.** The County shall be responsible, at its sole cost, for

providing C20 Programming to the School Board via a fiber optic or other agreed upon connection between the County and the School Board, in a format that is compatible with the Transmit Equipment. The County shall provide the following equipment for installation on School Board property in order to receive C20 Programming ("County Equipment"): One (1) Shelf to hold two (2) VBrick Decoders (Winsted Part# 88091), two VBrick Decoders (Part #9110-5200-001), one (1) Dual Rack Mounted Marshall Monitor (Model VR-18P-SDI), one (1) FM Systems DVS772 Hot Standby Switch (Part # DVS772.) Upon the expiration or termination of this Agreement, the County shall remove the County Equipment, all costs to be borne by the County.

7. **Minimum Picture Quality Requirements.** The transmission quality of C20 Programming broadcast within the 2608 to 2614 band shall be comparable to the transmission quality of the School Board's programming broadcast within the band.

8. **County Receive Sites.** As of the Effective Date of this Agreement, the County Receive Sites are as set forth in **Exhibit "A"**, which is attached hereto and incorporated herein. The Parties acknowledge that no amendment to this Agreement is required if the County wants to serve additional Receive Sites within the geographic service area of WMI841 or KHU90. The County acknowledges that the operation, maintenance, repair and replacement of all equipment at the County Receive Sites and all expenses associated therewith, is the County's sole responsibility.

9. **C20 Programming Content/Representations and Warranties.** The County acknowledges that that 2608 to 2614 MHz band is being leased from Sprint and can be used only for lawful educational or non-profit purposes. The County hereby assumes full responsibility for the content of all C20 Programming. The County represents and warrants to the School Board that all C20 Programming will (a) be educational or governmental, and (b) comply with applicable laws including, but not limited to, laws concerning obscenity, indecency, defamation, trademarks, copyrights, and infringement. The County will promptly assume the defense of any suit, claim, or other legal action brought against the School Board which arises out of any breach of these representations and warranties.

10. **Breach/Opportunity to Cure/Termination.** The Parties expressly covenant and agree that in the event either Party is in default of its obligations herein, the Party not in default shall provide to the Party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. Failure to cure said default within thirty (30) days following notice shall be grounds for termination of this Agreement. Termination of this Agreement by either Party shall require thirty (30) days prior written notice to the other Party prior to the termination date. The Parties may mutually agree to extend the time for cure and/or termination.

11. **Notice.** All notices required to be given under this Agreement shall be deemed sufficient to each Party when delivered by United States Mail to the following:

COUNTY

Lester Williams, Station Manager, Channel 20
300 N. Dixie Highway
West Palm Beach, FL 33401

SCHOOL BOARD

Judith Garcia, Manager, The Education Network

505 South Congress Avenue
Boynton Beach, Florida 33426

12. **Filing.** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

13. **No Transfer of Powers.** Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. This Agreement is solely an Agreement to provide services as authorized in Florida Statutes, Chapter 163. The governing bodies for County and School Board shall each maintain all legislative authority with regard to their respective entity. All of the privileges and immunities from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits which apply to the activity of officers, agents or employees of any public agency shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement.

14. **Indemnification.** County and School Board acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. County and School Board agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The Parties acknowledge that the foregoing shall not constitute an agreement by either Party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the Parties may have under such statute, nor as consent to be sued by third parties.

15. **Remedies.** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

16. **Force Majeure.** In the event that the performance of this Agreement by either Party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either Party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, neither Party shall be liable for such non-performance.

17. **Equal Opportunity Provision.** The County and the School Board agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, gender identity or expression, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

18. **Successors and Assigns.** County and School Board each binds itself and its partners, successors, executors, administrators and assigns to the other Party and to the partners, successors, executors, administrators and assigns of such other Party, in respect to all covenants of this Agreement. Neither County nor School Board shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.

19. **Waiver.** The failure of either Party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said Party may have for any subsequent breach, default, or non-performance, and said Party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

20. **Captions.** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

21. **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

22. **Amendment and Modification.** This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the Parties hereto.

23. **Entirety of Agreement.** County and School Board agree that this Agreement and any Exhibits hereto set forth the entire agreement between the Parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the Parties.

24. **No Assignment.** The Parties expressly acknowledge that nothing in this Agreement shall be construed as an assignment, sublease, lease, or sale of any of the School Board's rights under its lease with Sprint or of any of Sprint's rights concerning WMI841.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, the parties have affixed their signatures on the dates indicated below.

ATTEST:

PALM BEACH COUNTY, FLORIDA,
BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
JOHN F. KOONS
CHAIRMAN

Date: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Department Director

SCHOOL BOARD OF PALM BEACH COUNTY,
FLORIDA

By: _____
William G. Graham, Chairman

Board Approval Date:
8/27/08

ATTEST:

By: _____
Arthur C. Johnson, Ph.D., Superintendent

REVIEWED AND APPROVED AS TO LEGAL FORM

School Board Attorney

Date: 8/28/08

EXHIBIT A – COUNTY RECEIVE SITES

1. Comcast Pahokee Headend
729 ½ East 7th Street
Pahokee, FL 33476
2. Bright House Network Wellington Headend
11125 50th Street South
Wellington, FL 33467
3. Belle Glade County Government Complex
2976 State Road 15
Belle Glade, FL 33430
4. Palm Beach County Governmental Center
301 N. Olive Avenue
West Palm Beach, FL 33401
5. Comcast Wellington Headend
9689 Palomino Drive
Lake Worth, FL 33467
6. Palm Beach County Tower Site
21500 Southern Boulevard
Loxahatchee, FL 33470

09-

0384

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT

FUND 1521 - PUBLIC AFFAIRS REPLACEMENT FREQUENCY

BGEX 120808*703

BGRV 120808*228

| ACCT.NUMBER | ACCOUNT NAME | ORIGINAL BUDGET | CURRENT BUDGET | INCREASE | DECREASE | ADJUSTED BUDGET | EXPENDED/ ENCUMBERED AS OF 12/4/2008 | REMAINING BALANCE |
|-------------------------------------|---------------------|--------------------|-------------------|-----------|----------|--------------------|--|----------------------|
| <u>REVENUES</u> | | | | | | | | |
| <u>BRS Transition</u> | | | | | | | | |
| 640-6409-6999 | Other Misc. Revenue | 0 | 0 | 1,525,673 | 0 | 1,525,673 | | 1,525,673 |
| Total Receipts and Balances | | 0 | 0 | 1,525,673 | 0 | 1,525,673 | | |
| <u>APPROPRIATIONS</u> | | | | | | | | |
| <u>Reserves</u> | | | | | | | | |
| 640-9900-9902 | Operating Reserves | 0 | 0 | 1,525,673 | 0 | 1,525,673 | | 1,525,673 |
| Total Appropriations & Expenditures | | 0 | 0 | 1,525,673 | 0 | 1,525,673 | | |

Signatures

Date

Miss DeLeRonde
Jim Dink

12/8/08
12-8-08

SS 12/8/08

St 12/8/08

By Board of County Commissioners
At Meeting of
December 16, 2008
Deputy Clerk to the
Board of County Commissioners

Attachment #

INITIATING DEPARTMENT/DIVISION
Public Affairs
Administration/Budget Department Approval
OFMB Department - Posted