

**Spring Branch Independent School District
Agenda Item Information**

Date of Board Meeting: February 23, 2009

Subject: Request for Approval to Sign a Non-Binding EBS SPECTRUM ROYALTY AGREEMENT TERM SHEET with Harvests Independent Spectrum LLC for Possible Lease and/or Sale of FCC License KRZ68

Administrator Responsible:

Name: Venu Rao

Position: Chief Information Officer

Purpose of Agenda Item:

Information only

Action needed

Report

ADDITIONAL INFORMATION AND/OR BACK-UP:

This board action authorizes staff to enter into contract negotiations with Harvests Independent Spectrum LLC to lease and/or sell the FCC License KRZ68 currently owned by SBISD.

Harvests Independent Spectrum LLC approached SBISD with this offer. SBISD is currently working with George Foote, an FCC attorney with Braeswell and Guiliani to determine if the offer on the table is a fair one and if this is a credible company to deal with.

If we determine this is a good deal, we will then enter into negotiations with Harvests Independent Spectrum LLC to finalize the contract terms. Once the terms are finalized, we will make a presentation to the board to seek approval to proceed with the lease and/or sale.

BOARD AGENDA ITEM

BOARD MEETING DATE: February 23, 2009

Title:

Sign a non-binding EBS SPECTRUM ROYALTY AGREEMENT TERM SHEET with Harvests Independent Spectrum LLC for possible lease and/or sale of FCC License KRZ68

Administration recommendation:

SBISD is the licensee of 4 frequencies in the EBS (Educational Broadband Service) spectrum. SBISD used this license to operate a TV station a long time ago. SBISD no longer uses these frequencies. Harvests Independent Spectrum LLC has offered the District a non-binding term sheet describing a potential lease of the frequencies from SBISD for \$4M cash plus monthly payments for 30 years totaling \$31M. In addition, the term sheet suggests that SBISD will receive use of free and reduced rate broadband wireless internet accounts for 30 years. The term sheet values these accounts at a retail value of \$65M (over 30 years).

Authority for this action:

Policy CH (Local) requires the Board of Trustees to approve proposal awards greater than \$25,000.00.

Plan addressed:

Goal - Operations (O): SBISD will use strategic plans to be fiscally responsible and efficiently use all resources – human, time, and monetary – to support student achievement.

Objective O 3: Improve the use of technology through implementation of the district technology plan to increase district efficiency and effectiveness.

Performance Objective O 3.8: Improve technology department operations for better productivity and effectiveness.

Action Item O 3.8-6: Explore the possibility of selling or leasing the district FCC license.

Background:

SBISD is the licensee of 4 frequencies in the EBS (Educational Broadband Service) spectrum. The frequencies were of little value for many years, but recent technology advances in spectrum use and antennas, plus some FCC regulatory change, has given the frequencies new value. The new technology enables wireless high-speed internet access – speeds that may well exceed what you have at home through cable or DSL – in a broad geographical area, using cellular type

technology. This means you can surf the internet at high speeds in your car. You could have access to thousands of radio stations from around the world and so on. Small businesses can communicate between branch office locations wirelessly at a much reduced cost (compared to what they have to pay now for high-speed connectivity). Some of these services are being offered in WiMAX systems that are in commercial operation. The first public Wi-MAX network went live in Baltimore few months ago (September 2008). The service provider was Sprint.

We have not used our EBS frequencies in a long time. While there is some chance that the FCC could declare the frequencies to be forfeited, the main loss that we could experience is the failure to take advantage of the best offer to lease the frequencies. We used these frequencies many years ago to operate a TV channel. We have no interest in operating an "over-the-air" TV channel in the future. If we were to operate a TV channel in the future, it will be a "streaming video" channel over the internet.

Sprint and Clearwire are interested in these frequencies in the Houston area. Spectrum Harvests LLC may well be an aggregator who will ultimately sell to Sprint, but the principal for Spectrum Harvests has not been disclosed.

We have not been approached by any other potential lessees of the spectrum, but we may find competition for the spectrum in the future. We will investigate the value and potential competition for the spectrum.

Impact of this action:

SBISD will begin negotiating contract terms for Harvests Independent Spectrum LLC to lease/purchase our FCC License KRZ68. We have until June 30, 2009 to reach such an agreement. If we are unable to reach an agreement in the specified time frame, the discussions will terminate and we will continue to own these frequencies and be free to renegotiate with Harvests Independent Spectrum or with another party.

Resource personnel:

Venu Rao, Chief Information Officer

Attachments:

- (1) Lease only Term Sheet
- (2) Lease with Purchase Option Term Sheet

Independent Spectrum *Harvests LLC*

Revised PROPOSAL SUMMARY

Licensee – Call Sign – Channel Block: Spring Branch Independent School District
KRZ68 – D1-4

Date: January 29, 2009 **Type:** Lease-Only

Commercial Spectrum User - Acquisition Approved: Contingent upon final approval from the CSU
CSU will be disclosed within ten business days of Term Sheet execution.

Term: 30 Years

Total Economic Consideration: \$32,526,119.00

Total Upfront Cash: \$2,734,139.00

Monthly Payments:

Years 1 – 5	\$ 33,602.00
Years 6 – 10	\$ 49,342.00
Years 11 – 15	\$ 65,096.00
Years 16 – 20	\$ 85,900.00
Years 21 – 25	\$102,632.00
Years 26 – 30	\$159,961.00

Purchase Option: No

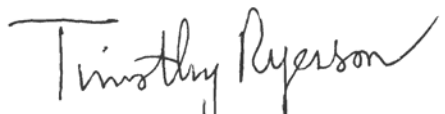
Educational Services: Yes - through July 31, 2038 with scheduled adjustments.

Estimated Education Services Value: \$67,200,000.00
Not included in Total Economic Consideration

Total Value: \$99,726,119.00
Total Economic Consideration plus Minimum Estimated Educational Services Value

CPI Adjustment: 3% annual per index-based term beginning Year-5

Exclusive Negotiation Period: Terminates June 30, 2009



Timothy Ryerson, Harvests LLC

Harvests LLC represents, exclusively, the Independent Spectrum Companies and their Commercial Services partner. This is a summary of the Independent Spectrum LLC offering and is not a legally binding document. Please refer to the attached Term Sheet agreement for the definitive terms and conditions.

**INDEPENDENT SPECTRUM, LLC
 SPRING BRANCH INDEPENDENT SCHOOL DISTRICT
EBS SPECTRUM ROYALTY AGREEMENT TERM SHEET**

Independent Spectrum, LLC or one of its affiliates or wholly-owned subsidiaries (“User”), User’s Commercial Spectrum User (“CSU”), and the Educational Broadband Service spectrum licensee (“Licensee”) are exploring a possible agreement whereby the Licensee will make available commercial capacity to User the Licensee’s Educational Broadband Service station(s) (the “EBS Spectrum”) and the excess capacity of such EBS Spectrum subsequently will be made available to the CSU for commercial wireless broadband purposes. This term sheet is intended to summarize certain significant terms of such a possible arrangement, but does not represent a definitive agreement and is not binding on the Parties (except as set forth below under the caption “Binding Provision”) unless and until they enter into a definitive agreement that explicitly creates binding obligations on the Parties. *This term sheet and offering expires February 28, 2009.*

Licensee	Spring Branch Independent School District – KRZ68 D1-4
User	Independent Spectrum LLC
Commercial Spectrum User (CSU)	To be disclosed by User to Licensee within 10 business days of Term Sheet execution
Agreement Term	Approximately thirty (30) years beginning the “Effective Date” and ending July 31, 2038, subject to FCC renewal of the license(s). <ul style="list-style-type: none"> ▪ The Effective Date is the date of the Individual Use Agreement (IUA) execution. ▪ The Commencement Date is the date the FCC grants the <i>de facto</i> transfer sublease application between the User and CSU.
Consideration Under Agreements	User shall pay to the Licensee \$32,526,119.00 in total economic royalties as described below. Payments from the User to Licensee are conditioned upon fulfillment of the following requirements: <ul style="list-style-type: none"> ▪ Execution of the Individual Use Agreement (IUA) ▪ FCC approval of a <i>de facto</i> transfer lease application between the Licensee and the User ▪ FCC approval of a <i>de facto</i> transfer sublease application between the User and the CSU

Upfront Royalties	<p>The User will pay \$2,734,139.00 in cash (“Upfront Cash”) upon FCC approval of the <i>de facto</i> transfer sublease Application between the User and its CSU.</p> <p>In the event the Commencement Date does not occur within 365 days of execution of the Spectrum Royalty Agreement, either party may terminate that agreement.</p>												
Monthly Payments to Licensee	<p>The remainder of the total economic consideration will be paid monthly to the Licensee based on the following payment schedule (subject to increase beginning in year five due to the Limited CPI Adjustment, described below):</p> <hr/> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">YEAR 1-5</td> <td style="text-align: right;">\$33,602.00</td> </tr> <tr> <td>YEAR 6-10</td> <td style="text-align: right;">\$49,342.00</td> </tr> <tr> <td>YEAR 11-15</td> <td style="text-align: right;">\$65,096.00</td> </tr> <tr> <td>YEAR 16-20</td> <td style="text-align: right;">\$85,900.00</td> </tr> <tr> <td>YEAR 21-25</td> <td style="text-align: right;">\$102,632.00</td> </tr> <tr> <td>YEAR 26-30</td> <td style="text-align: right;">\$159,961.00</td> </tr> </table>	YEAR 1-5	\$33,602.00	YEAR 6-10	\$49,342.00	YEAR 11-15	\$65,096.00	YEAR 16-20	\$85,900.00	YEAR 21-25	\$102,632.00	YEAR 26-30	\$159,961.00
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YEAR 26-30	\$159,961.00												
CPI Adjustment	<p>The “Limited CPI Adjustment” will be the annual adjustment beginning in year five of the monthly royalties paid to the Licensee to the extent of CPI increases during the prior calendar year in excess of 3% (if any).</p>												
Permitted Use of Spectrum	<p>Any use permitted by Federal Communications Commission (FCC).</p>												
Educational Services	<p>The Licensee shall have access to the “Educational Services” as provided by the Commercial Spectrum User (CSU) which shall meet or exceed the 5 percent educational spectrum capacity required by the FCC for the band. The Licensee may utilize the Educational Services through the Commercial Spectrum User’s broadband network 24/7 as desired for Licensee’s operations when the CSU launches broadband wireless service in the Licensee’s local area.</p> <p>The CSU shall provide the Licensee cost-free broadband network connections (“Cost-free Educational Accounts”). The Licensee will receive one (1) Cost-free Educational Account per Cell Site per market and two (2) Cost-free Educational Accounts per transmission sector. (There are typically three sectors per Cell Site, however this number may vary). These Cost-free Educational Accounts shall have the same capacity and characteristics as the highest level of premium mass market retail service provided on the CSU’s local network. Multiple individuals may share the same Cost-free Educational Account through Wi-Fi hotspots, local area networks, or other means.</p> <p>Licensee’s entitlement to the Educational Services is subject to the Licensee’s</p>												

	ongoing use of those Educational Services. If the Licensee does not utilize the Educational Services allocation in the full quantities available, the unused portion will revert to the control of the User.
Licensee Wholesale Option	In addition to the Educational Services described above, the Licensee shall have the right to secure additional Educational Accounts in each market beyond the Cost-free Educational Accounts, as follows: 1) The CSU shall provide Educational Accounts to Licensee on a wholesale basis at a cost equal to the lowest wholesale rate provided by the CSU to an arms-length third party in such market. However, the number of wholesale Educational Accounts is limited in each market to twice the number of Cost-free Educational Accounts for that market; and 2) If the Seller does not utilize the wholesale Educational Accounts in the full quantities available, the unused portion will revert to the control of the User.
Definition: Educational End Users	Cost-Free Educational Accounts and wholesale Educational Accounts shall be exclusively for Educational End Users and not for resale, assignment or transfer by Licensee outside of its Educational End User environment or to persons who cease to be officially associated with the Educational End User. (By way of example, a Licensee may resell such accounts to its students, faculty, administrators and staff, while such persons are involved with its institution, but shall cease to provide the service if a member of the faculty terminates employment or a student graduates and ceases to be involved in the organization's matters.)
Access to Educational End User Devices	The CSU shall also make end-user equipment available for purchase by the Licensee at ten (10) percent above its cost. Equipment provided to the Licensee pursuant to this section shall be used solely by Educational End Users and not for resale. It is anticipated that evolving technology will provide for wireless high-speed broadband connectivity to be incorporated in readily available mobile data and computer devices.
Substantial Service Requirements	The CSU shall build and maintain in service such facilities as are needed to qualify under the substantial service standards of current FCC rules (and any successor regulations).
Commercial Service User (CSU) Performance	Economic royalties, educational services consideration, and fulfillment of substantial service obligations are dependant upon CSU performance of contractual obligations as set forth in its agreement with the User. In the event the CSU fails to perform all or part of its obligations, the User shall make commercially reasonable efforts to enforce such agreement. User will seek to recover enforcement costs from the CSU, but, if User is unable to do so, User and Licensee shall pay such costs equally. If the CSU defaults on its obligations such that the <i>de facto</i> transfer sublease is terminated, User will devote commercially reasonable efforts to enter into a new sublease agreement with a replacement CSU that provides a package of consideration to Licensee and User that is substantially similar (or superior) to that of the terminated agreement. If no such sublease is concluded within thirty-six (36) months of termination of the original sublease, Licensee shall have the right to terminate the <i>de facto</i> transfer lease between Licensee and User.

<p>Binding Provision</p>	<p>Execution of this Term Sheet is wholly contingent upon final approval of the transaction from the CSU. Upon its execution, the User and Licensee shall use their reasonable best efforts to negotiate and execute by June 30, 2009 a definitive Individual Use Agreement reflecting the provisions of this Term Sheet, and containing mutually acceptable additional covenants, dispute resolution provisions, indemnities, representations and warranties, and such other provisions as the parties may agree. During the period from the date of execution of this Term Sheet through June 30, 2009 (the “Exclusive Period”), Licensee and its agents and/or advisors will not discuss or solicit other opportunities to enable third parties to purchase, lease, or otherwise make use of the capacity of the EBS station(s) covered under the transactions described in this Term Sheet. Further, for a period of three years following the execution of this Term Sheet, Licensee agrees that it will not solicit, engage, or enter into direct or indirect negotiations pertaining to the spectrum described herein with the Commercial Spectrum User or its agents or affiliates without the advance written consent of Independent Spectrum LLC (“Licensee’s Non-circumvention Covenant”).</p> <p>The Parties acknowledge that the provisions of the definitive documents being drafted must be submitted to the governing boards of each of the parties for their approval and agree that the Term Sheet will expire if such approvals are not forthcoming by the end of the Exclusive Period. The parties agree that the Term Sheet may be extended beyond the June 30, 2009 deadline by mutual agreement of the parties. Licensee’s Non-circumvention Covenant shall survive the expiration or termination of this Term Sheet.</p>
<p>Execution of Term Sheet</p>	<p>AGREED TO:</p> <p>INDEPENDENT SPECTRUM LLC</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>SPRING BRANCH INDEPENDENT SCHOOL DISTRICT</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>

Independent Spectrum *Harvests LLC*

Revised PROPOSAL SUMMARY

Licensee – Call Sign – Channel Block: Spring Branch Independent School District
KRZ68 – D1-4

Date: January 29, 2009

Type: Lease with Purchase Option

Commercial Spectrum User - Acquisition Approved: Contingent upon final approval from the CSU
CSU will be disclosed within ten business days of Term Sheet execution.

Term: 30 Years

Total Economic Consideration: \$35,511,835.00

Total Upfront Cash: \$4,237,915.00

Monthly Payments:

Years 1 – 5	\$ 35,702.00
Years 6 – 10	\$ 52,426.00
Years 11 – 15	\$ 69,164.00
Years 16 – 20	\$ 85,900.00
Years 21 – 25	\$108,670.00
Years 26 – 30	\$169,370.00

Purchase Option: Yes

Effective Purchase Option Date: July 1, 2037

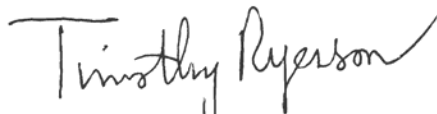
Educational Services: Yes - through July 31, 2038 with scheduled adjustments.

Estimated Educational Services Value: \$67,200,000.00
Not included in Total Economic Consideration

Total Value: \$102,711,835.00
Total Economic Consideration plus Estimated Educational Services Values

CPI Adjustment: 3% annual per index-based term beginning Year-5

Exclusive Negotiation Period: Terminates June 30, 2009



Timothy Ryerson, Harvests LLC

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Consideration Under Agreements	User shall pay to the Licensee \$35,511,835.00 in total economic royalties as described below. Payments from the User to Licensee are conditioned upon fulfillment of the following requirements: <ul style="list-style-type: none"> ▪ Execution of the Individual Use Agreement (IUA) ▪ FCC approval of a <i>de facto</i> transfer lease application between the Licensee and the User ▪ FCC approval of a <i>de facto</i> transfer sublease application between the User and the CSU

Upfront Royalties	<p>The User will pay \$4,237,915.00 in cash (“Upfront Cash”) upon FCC approval of the <i>de facto</i> transfer sublease Application between the User and its CSU.</p> <p>In the event the Commencement Date does not occur within 365 days of execution of the Spectrum Royalty Agreement, either party may terminate that agreement.</p>												
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Permitted Use of Spectrum	<p>Any use permitted by Federal Communications Commission (FCC).</p>												
Educational Services	<p>The Licensee shall have access to the “Educational Services” as provided by the Commercial Spectrum User (CSU) which shall meet or exceed the 5 percent educational spectrum capacity required by the FCC for the band. The Licensee may utilize the Educational Services through the Commercial Spectrum User’s broadband network 24/7 as desired for Licensee’s operations when the CSU launches broadband wireless service in the Licensee’s local area.</p> <p>The CSU shall provide the Licensee cost-free broadband network connections (“Cost-free Educational Accounts”). The Licensee will receive one (1) Cost-free Educational Account per Cell Site per market and two (2) Cost-free Educational Accounts per transmission sector. (There are typically three sectors per Cell Site, however this number may vary). These Cost-free Educational Accounts shall have the same capacity and characteristics as the highest level of premium mass market retail service provided on the CSU’s local network. Multiple individuals may share the same Cost-free Educational Account through Wi-Fi hotspots, local area networks, or other means.</p> <p>Licensee’s entitlement to the Educational Services is subject to the Licensee’s</p>												

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Purchase Option	At any time after June 30, 2037 the User shall have the option to purchase the EBS system(s) from Licensee for the sum of \$4,237,915.00.
Binding Provision	<p>Execution of this Term Sheet is wholly contingent upon final approval of the transaction from the CSU. Upon its execution, the User and Licensee shall use their reasonable best efforts to negotiate and execute by June 30, 2009 a definitive Individual Use Agreement reflecting the provisions of this Term Sheet, and containing mutually acceptable additional covenants, dispute resolution provisions, indemnities, representations and warranties, and such other provisions as the parties may agree. During the period from the date of execution of this Term Sheet through June 30, 2009 (the "Exclusive Period"), Licensee and its agents and/or advisors will not discuss or solicit other opportunities to enable third parties to purchase, lease, or otherwise make use of the capacity of the EBS station(s) covered under the transactions described in this Term Sheet. Further, for a period of three years following the execution of this Term Sheet, Licensee agrees that it will not solicit, engage, or enter into direct or indirect negotiations pertaining to the spectrum described herein with the Commercial Spectrum User or its agents or affiliates without the advance written consent of Independent Spectrum LLC ("Licensee's Non-circumvention Covenant").</p> <p>The Parties acknowledge that the provisions of the definitive documents being drafted must be submitted to the governing boards of each of the parties for their approval and agree that the Term Sheet will expire if such approvals are not forthcoming by the end of the Exclusive Period. The parties agree that the Term Sheet may be extended beyond the June 30, 2009 deadline by mutual agreement of the parties. Licensee's Non-circumvention Covenant shall survive the expiration or termination of this Term Sheet.</p>
Execution of Term Sheet	<p>AGREED TO:</p> <p>INDEPENDENT SPECTRUM LLC</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>SPRING BRANCH INDEPENDENT SCHOOL DISTRICT</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>