Report of the Vermont State Auditor



November 2, 2007

VERMONT STATE
COLLEGES -- LEASING OF
EDUCATIONAL
BROADBAND SERVICE (EBS)
SPECTRUM & COMPETITIVE
BIDDING REVIEW

Mission Statement

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STATE OF VERMONT OFFICE OF THE STATE AUDITOR

November 2, 2007

Governor James H. Douglas Speaker of the House of Representatives Gaye Symington President Pro Tempore of the Senate Peter Shumlin Chancellor Robert G. Clarke, Vermont State Colleges

Dear Colleagues:

My Office has completed a review of the Vermont State Colleges' (VSC) lease of three educational broadcast licenses to the Utopian Wireless Corporation in February of this year.

The following report documents our findings that:

- While VSC was not required under State law, State government regulations, or its
 own bylaws or adopted policies to publicly bid the opportunity to lease Educational
 Broadband Service (EBS) spectrum, we believe VSC should have done so as a matter
 of prudent fiscal stewardship of public resources. VSC administrators acknowledged
 that they would bid the project if they had to do it again, and a new VSC policy
 requires it in the future.
- While VSC was not required to seek a professional appraisal or valuation of its EBS licenses, or technical advice from expert outside counsel, prior to entering into a long-term lease, it should have done so as a matter of proper due diligence. Broadcast spectrum is a scarce resource and a professional valuation would, in our opinion, have served VSC well. VSC miscalculated the likely cost of an appraisal, which we found to be in the range of \$3,000 to \$12,500. VSC also did not engage outside counsel with FCC and EBS license experience to review its lease agreement before execution.
- The VSC leases brought the colleges initial payments totaling \$105,000 and may bring as much as a total of \$483,000 with monthly lease fees over 30 years. Additional compensation is possible if 30,000 equity shares of stock acquired by VSC as part of the transaction (at \$1 each) grow in value over time.
- However, outside experts indicated to us that VSC may have received less than fair market value for the EBS spectrum it leased. One expert suggested that the VSC leases could have returned \$1,103,615 million over 30 years based on typical national industry values in place at the time of the transaction. This is a variance of \$620,615, less any gain from equity shares of stock.

- Five outside experts we spoke to expected Utopian Wireless to sub-lease the VSC license spectrum to a larger entity such as Sprint Nextel or Clearwire, rather than making system investments and offering telecom and mobile broadband services by itself in its 35-mile service radius from Grandpa's Knob in Rutland County.
- Experts pointed out that such a sub-lease, if it quickly brought mobile broadband access and significant data transmission capacity to underserved residents and businesses, could be good for the State.
- VSC has policies and procedures in place for competitive bidding of capital projects and major facility repairs funded in part through appropriations from the Vermont State Legislature. VSC was in substantial compliance with its bidding policies and procedures in two maintenance and construction projects sampled for this review.

The VSC lease agreement can be viewed as an unusual, one-time transaction in which an entity monetizes a previously forgotten and largely unknown asset. The lesson here is that unusual, one-time transactions may present risks due to their uniqueness or complexity, and care should be taken to fully understand the potential risks and benefits of such opportunities. Management could have formally brought the issue to the VSC Board of Directors for review and guidance, for example.

I would also note that some Vermont officials were disappointed with the VSC decision to lease spectrum at a time when State and local officials have been working to identify available spectrum for public safety and economic development initiatives. According to the Legislature's Vermont Telecommunications Authority statute passed this past year, the Authority must approve all future disposition of excess broadcast spectrum from State entities such as VSC. Further, absent new negotiations with, and concessions from, Utopian Wireless, it appears that the spectrum cannot be re-bid in any way by VSC.

In summary, it's my opinion that VSC should have sought a professional appraisal of the potential lease value of its licenses, should have bid the lease opportunity publicly, and should have engaged expert counsel to review any proposed lease agreement. Had it done so, it appears that VSC likely could have received higher compensation for use of this public asset.

We appreciate the cooperation we've received from VSC in conducting this review. Please feel free to contact me to discuss this report at any time. Thank you.

Sincerely,

Thomas M. Salmon, CPA Vermont State Auditor

Thomas M. Salmon CPA

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Abbreviations in this report

CSC	Castleton State College
BRS	Broadband Radio Service
DII	Department of Information and Innovation
EBS	Educational Broadband Service (formerly ITFS)
FCC	Federal Communications Commission
GHz	Gigahertz
GSA	Geographic Service Area
ITFS	Instructional Television Fixed Spectrum (now EBS)
LSC	Lyndon State College
MHz	Megahertz
VSC	Vermont State Colleges
VTC	Vermont Technical College

Introduction

In May and June of this year, concerns were raised by the Administration and this Office about the February 2, 2007 execution of an agreement between the Vermont State Colleges (VSC) and the Utopian Wireless Company for Utopian to lease the broadcast and telecommunication spectrum of three Educational Broadband Spectrum (EBS) licenses¹. According to the agreement, Utopian Wireless is a Delaware corporation with its principal office in Silver Spring, Maryland.²

The State Auditor met with the Secretary of the Agency of Administration and the Chancellor of the Vermont State Colleges to review the concerns which centered largely on the fact that VSC did not conduct a public bid process for the leasing rights and further, that VSC may not have received fair market value for leasing its EBS spectrum.

The State Auditor decided to conduct a review of the matter, seeking to answer these primary questions:

- 1. Was VSC required to conduct a public competitive bid before leasing its EBS channels for commercial use?
- 2. Did VSC receive fair market value in the transaction?

¹ The spectrum now comprising the EBS band was first established in 1963 for the purpose of transmitting instructional video programming to schools and colleges, but digital uses of this spectrum were not permitted until 1996; two-way services were not permitted until 1998; and mobile services were not permitted until 2001.

² According to the Federal Communications Commission website, the primary owners of Utopian Wireless are Rudolph J. Geist of Bethesda, MD (42.9% ownership); Holly P. Geist of Bethesda, MD (20%); Douglas A. Hosack, Washington, D.C. (13.1%); and Gregory Rohde, Washington, D.C. (10%).

3. Because VSC receives significant funds each year from the State, does the organization have and follow competitive bidding procedures when spending funds appropriated by the Vermont State Legislature for capital projects and major facility maintenance work?

Highlights: Report of the Vermont State Auditor

Vermont State Colleges – Leasing of Educational Broadband Service (EBS) **Spectrum & Competitive Bidding Review**

(November 2, 2007, Rpt. No. 07-11)

Why We Did This Review

The State Auditor reviewed the EBS lease transaction and competitive bidding policies at VSC due to Administration and public concerns regarding a lack of open bidding for a publicly held asset. The citizens of Vermont pay significant tax dollars to the Vermont State Colleges through state appropriations and tuition. A prudent approach to fiscal matters, including the leasing of VSC-controlled assets, is important to maintain public confidence in the integrity of the VSC system.

What We Recommend

As a consequence of conducting this review, we have recommended that:

- a. the VSC Board of Trustees approve the proposed policy which requires open, competitive bidding for any future EBS spectrum leases. (This occurred on October 25, 2007.)
- b. VSC improve documentation of construction contract files to better report decisions that management has made regarding bids and contract awards.

What We Found

This report documents our findings that:

- VSC was not required under State law, State government regulations, under its own bylaws or adopted policies and procedures to publicly bid the opportunity to lease EBS spectrum. We believe VSC should have bid the project as a matter of prudent fiscal stewardship of public resources.
- VSC did not seek a professional appraisal or valuation of its EBS licenses prior to entering into a long-term lease, nor did it seek the advice of outside counsel to review technical aspects of the leases. We believe VSC should have contracted for an appraisal as a matter of prudent fiscal stewardship of public resources. We estimated that a professional appraisal of license value, and legal review of the proposed lease, would have cost between \$3,000 and \$12,500.
- There are several indications that VSC did not receive fair market value for the EBS spectrum it leased. One expert suggested that the VSC leases could have returned \$1,103,615 to VSC over the 30-year lease term.
- VSC has policies and procedures in place for competitive bidding of capital projects and major facility repairs funded in part through appropriations from the Vermont State Legislature.
- VSC was in substantial compliance with its bidding policies and procedures in two maintenance and construction projects sampled for this review.

Background

The Educational Broadband Service (EBS) licenses are in the names of Castleton State College (CSC), Lyndon State College (LSC), and Vermont Technical College (VTC) but all pertain to one geographical area – a 35-mile radius from Grandpa's Knob in Rutland County.

The FCC received the three license applications on January 13, 1992, but did not grant them until April 18, 2005¹. Outside experts told us that this long delay was not uncommon, as the FCC was inundated with educational broadcast license applications and took years to process its large backlog. VSC had lost track of the application requests, and since receiving licenses has not utilized its licensed spectrum in any way. The colleges initially applied for the licenses at the request of a Vermont commercial company which has since gone out of business.

In 2004 the FCC adopted rules to allow holders of EBS licenses to lease their excess spectrum, subject to certain FCC rules and regulations². The FCC wanted to "facilitate significantly broader access to valuable spectrum resources by enabling a wide array of facilities-based providers of broadband and other communications services to enter into spectrum leasing arrangements with Wireless Radio Service licensees."³

In addition, the FCC envisioned that private sector leases would help the nonprofit licensees construct new and innovative educational networks.

A consulting firm reported to the Association of Public Television Stations in 2006 that the new FCC regulations offer EBS licensees "lucrative opportunities for leasing their spectrum rights in the 2.5 GHz band.

¹ The Castleton State College license is for EBS channels C1, C2, C3, and C4, under call sign WQCN270. The VTC license is for EBS channels A1, A2, A3, and A4 under call sign WQCI646, and the Lyndon State College license is for EBS channels D1, D2, D3, and D4 under call sign WQCN711. All spectrum is in the 2.5 GHz band.

² For example, VSC, as the primary licensee, must adhere to certain use requirements, such as retaining 5% of its transmission capacity for educational purposes. For more information on requirements, see: http://wireless.fcc.gov/services/index.htm?job=service_home&id=ebs_brs

³ FCC Website, "BRS & EBS Radio Services." See Internet reference in previous footnote.

Commercial service providers, such as Sprint Nextel, Clearwire, and NextWave Broadband, are actively seeking to lease 2.5 GHz spectrum to deploy wireless services."⁴

The lease transaction is expected to bring VSC up to \$483,000 over 30 years, with additional revenue possible due to stock options received as part of the transaction. The monthly fee revenue is contingent upon Utopian's adherence to contract performance clauses and renewing lease terms for the full 30-year term.

Each lease has identical compensation terms: a \$35,000 initial payment; 10,000 shares of Utopian Wireless Corporation Class A common stock issued at the price of \$1 per share⁵; and monthly fees \$300 per month for the first 10 years; \$350 per month for the second 10 years; and \$400 per month for the final 10 years. During the lease term, VSC may not negotiate or contract with any third party to lease, sell, assign, transfer or use any of the capacity of the EBS channels.⁶

VSC has received a total of \$105,000 in initial payments, and is receiving monthly fee payments on time. VSC is currently reviewing a Shareholders' Agreement from Utopian and has not been issued the stock certificates as of this report.

Scope & Methodology

Our efforts in this review were restricted to the issue of the EBS license leases and the question of competitive bidding for VSC construction and maintenance projects funded with State dollars.

We interviewed the VSC General Counsel, the primary negotiator for the EBS leases, the VSC Chancellor, and other VSC staff to better understand the

⁴ Wiley Rein & Fielding LLPL, Washington, DC, Summary of Recent FCC Actions That Enhance ITFS License Holders' Ability to Lease Spectrum to Commercial Wireless Broadband Service Providers, prepared for Association of Public Television Stations, 2006, p. 2.

⁵ VSC reports that its share of stock represents approximately 1.6 percent of the Class A Common Stock of the company and that there are also Class B shares as well.

⁶ VSC may negotiate with a third party only during the last 90 days of the lease; or during the last 90 days of a 10-year term where Utopian Wireless has notified VSC that it has elected not to renew the agreement.

lease transaction. We reviewed the lease file and the executed leases, and the Vermont statutes pertaining to VSC and also VSC policies and procedures adopted by the VSC Board of Trustees. We also reviewed minutes of VSC Board of Trustee meetings.

We also spoke with outside experts in the broadband and telecommunications field regarding the fair market value question. We hired an engineering firm to prepare a Geographical Service Area (GSA) map, with population counts from the 2005 U.S. Census to assist in the fair market discussions. This map depicts any areas where other FCC licenses may overlap in the 35-mile radius of the permitted transmitter. The area with no overlap is considered the "exclusive GSA territory" where the potential business return per household is greater.

We reviewed the contract files related to two construction projects and interviewed the VSC facilities director about these projects.

Further, we shared a draft of this report with VSC administrators and made adjustments to the report based on their comments. VSC generally accepts the findings and recommendations expressed in this report.

Findings and Recommendations

Finding 1 No Requirement to Publicly Bid EBS License Spectrum, But Due Diligence Not Performed

We found no State law or VSC policy that required VSC to conduct an open competitive bid for the EBS license spectrum it leased to the Utopian Wireless Corporation on February 2, 2007.

In fiscal year 2007, the Vermont State Colleges had operating expenses of approximately \$140 million. As befits a multi-campus educational organization of this size, there are extensive policies and procedures adopted by the Board of Trustees over the years and many are currently posted on the VSC website.

We found no bidding requirement in the Vermont State laws which created the Vermont State College system and delineated its rights and responsibilities as an instrumentality of the State. (See 16 V.S.A. §2171 *et. seq.*) 16 V.S.A. §2171(d) notes that "the Corporation shall not abandon,"

lease, sell or dispose of any of the institutions under its control unless such action is specifically authorized by the general assembly." This mandate, however, applies to member colleges of the system rather than to particular assets those colleges may hold.

At the time of the EBS lease process (approximately July, 2006 through January, 2007) we found no specific VSC policies in place requiring a competitive bid process to lease EBS license spectrum.

Based on questions from the State Auditor, the Attorney General's Office issued an opinion which stated:

VSC's structural, operational and financial independence from the Executive Branch places it outside the relevant definition of "Agency," meaning it need not conduct a Bulletin 3.5 formal bid process before entering into an educational broadband license [lease]." ⁷

VSC Policy No. 422 requires a public bid for surplus equipment valued in excess of \$5,000, but the EBS lease did not involve any equipment.

VSC Policy No. 426, *Acquisition & Disposal of Real Estate*, was adopted in June, 2007; however, the policy does not address the *leasing* of assets such as an EBS license. The policy requires that "any real estate *sale* shall occur only after a public advertising or bidding process, unless special circumstances are present and documented." [Emphasis added.]

VSC Policy No. 427, *Leasing of Educational Broadband Services Spectrum*, was proposed by the administration after the contract execution, and states:

Before leasing any EBS spectrum, the Vermont State Colleges, or any member College thereof, shall publicly advertise for bids on such spectrum and, if appropriate, shall invite bids from three or more potential lessees. The VSC Board of Trustees shall be notified of any proposed leasing of EBS spectrum.⁸

⁷ Jacob Humbert, Assistant Attorney General, September 6, 2007, p. 2. Bulletin 3.5 refers to: *Agency of Administration Bulletin No. 3.5, Contracting Procedures.*

⁸ The memo to the Board of Trustees from the VSC General Counsel on the proposed policy notes: "In light of our experience with previous leasing of EBS spectrum, public bidding is a sound method of gauging fair market value and should be employed in advance of entering into any such leases."

In our draft report, we recommended that the VSC Board of Trustees approve this policy proposal and it did so October 25, 2007.

Both the VSC Chancellor and General Counsel stated that a public bid process would be the preferred approach if they were to conduct the EBS lease transaction again.

VSC did not seek an appraisal

While there was not a specific VSC or statutory requirement to conduct an open, competitive bid process for the leasing of its EBS licenses, we note that, in our opinion, a prudent fiscal step on the part of management would have been to determine the value of the asset being leased through a professional appraisal or valuation.

By way of analogy, if VSC staff discovered an original Normal Rockwell painting in the attic of the Castleton State College library, VSC would most likely not sell the painting to the first collector expressing an interest in acquiring it for a certain price. A more prudent approach would likely involve an appraisal by a qualified expert.

VSC did not seek a fair market appraisal or valuation of the EBS license spectrum. VSC indicated that it miscalculated its estimate of what an appraisal might cost and did not seek quotations from appraisers.

VSC's General Counsel said that this misunderstanding – that the price of an appraisal might be significant, perhaps nearing expected initial revenue – was a factor in the Chancellor's decision to execute the contract without an appraisal. The Auditor's Office received proposals from four industry experts or firms which appraise EBS leases. The quoted prices for appraisals ranged from approximately \$3,000 to \$12,500.

VSC did not seek expert counsel to review lease

According to industry experts, once a commercial provider identifies a viable spectrum leasing opportunity, it typically presents a "form lease" agreement to the EBS license holder that typically contains provisions which heavily favor the provider. Consultants to the Association of Public Television Stations cautioned, "EBS licensees are well advised to seek counsel before signing such a lease. Counsel will help the licensee understand the consequences of the numerous provisions in the form lease, including the

pitfalls, and assist the licensee in securing more favorable – and necessary – terms." The consultants cited right-of-first-refusal clauses, exit restrictions on the lessee, educational use requirements, and FCC service requirements as key areas for review.

Another expert told us, "The 2.5GHz spectrum is very specialized and most schools that own these licenses are not aware of the FCC rule changes that affect the use of the spectrum and in turn the value of the spectrum ... There is no way that a college attorney would be able to follow/interpret the FCC's changes and the impact these rules have on the use and value of the spectrum."

VSC's General Counsel did inquire with other university and college attorneys via an e-mail list serve regarding valuation in general, but VSC did not engage outside counsel with experience in EBS lease transactions.

Only one company made proposal

VSC noted that several companies were making inquiries about the EBS licenses. While this fact may have given VSC the feeling that a competitive bidding situation was developing, VSC discovered during the process that two of the interested entities, Utopian Wireless Corp, and RJG Law LLC, of Washington, D.C., were essentially controlled by the same person, Rudolph J. Geist. This situation did not seem to raise special concerns at VSC.

VSC also reported that Finn Mulligan, representing a company called UNE, discussed the EBS licenses with VSC but never submitted a lease proposal. VSC also reports that it contacted its own service provider, Level 3/TelCove, which did not express any interest in the leases.

VSC says State gave green light

One of the justifications advanced by VSC for executing the lease agreements without a public bid process was that VSC received permission to do so from the State.

⁹ Wiley Rein & Fielding LLPL, Washington, DC, Summary of Recent FCC Actions That Enhance ITFS License Holders' Ability to Lease Spectrum to Commercial Wireless Broadband Service Providers, prepared for Association of Public Television Stations, 2006, p. 4.

VSC's Chancellor reported receiving a phone call from the State's Commissioner of the Department of Information and Innovation (DII) shortly before the leases were signed. The Chancellor reports, "I asked him specifically if he wanted me to wait on signing the contracts and he said 'no."

The DII Commissioner recalls the telephone call he placed to the Chancellor as occurring on the day before the Governor announced Vermont's "E-State' Initiative" on January 23.¹⁰ The Commissioner reports that he discussed the value of VSC's EBS licenses to the State, saying they were assets that could be very beneficial to Vermont over the long term. The Commissioner reported to us, "I said if he could hold off [from signing the leases] it would be a great asset for the State." The Commissioner maintains he did not tell the Chancellor to go ahead with signing the leases.

Summary

Prudence is the exercise of good judgment in a business matter. In the common view, a prudent financial decision is one that would likely be repeated if a disinterested and qualified person was presented with the same set of facts and circumstances.

Though VSC was not required to appraise its EBS license assets and conduct an open, competitive process to lease them to the highest bidder, VSC should have done so, in our opinion. Appraising assets and conducting a public bid are prudent steps which typically help management meet its fiscal responsibilities and maintain public trust and confidence. However, it should be noted that such steps do not necessarily guarantee that a resulting agreement would be better financially than a negotiated agreement, such as the one VSC executed.

The VSC Board of Trustees should approve the new policy requiring the public bidding of EBS license spectrum. (This action occurred on October 25, 2007.)

¹⁰ H. 248 [Act No. 79 of the 2007 Session], *Establishing the Vermont Telecommunications Authority to Advance Broadband and Wireless Communications Infrastructure throughout the State*, was signed into law by Governor Douglas on June 9, 2007. Section 8063(d) was added to the bill after the VSC decision to execute the leases. This section noted: "No instrumentality of the state shall sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without prior notice to and approval of the authority."

Finding 2

Fair Compensation Likely Not Obtained

We spoke with several outside industry experts to help answer the question of whether or not VSC received fair market compensation for its leases.

One expert who has been valuing EBS licenses for more than 10 years, and who has helped value more than 200 EBS licenses in the past two years, indicated that there are a variety of factors that influence the lease value of an EBS license. These can include:

- Population size in the 35-mile radius of the license area more population means greater potential value;
- Amount of spectrum available with the license more spectrum available means greater potential value;
- Supply, or other licenses for lease in the area the lower the supply the greater likelihood of increased value;
- Competition from other telecom type providers in the area fewer competitors means greater potential value;
- Length of lease the longer the lease the greater potential value to potential lessees;
- Whether or not expired EBS licenses extending in the GSA are reinstated by the FCC if not reinstated, it could mean higher potential value
- Incomes of population households higher income households means greater potential value; and
- Consumer acceptance of new technology if consumers quickly accept the new mobile WiMax¹¹ technology being developed by Sprint and Clearwire for wireless broadband computing using the 2.5GHz band, the greater the potential value.

Estimating EBS lease value

According to research and our discussions with outside experts, the telecommunications industry typically uses a formula to estimate spectrum lease returns that involves "price per population per MHz multiples."

¹¹ Worldwide Interoperability for Microwave Access – WiMax.

MHz is the megahertz of spectrum available for potential lease. Population is the population count in the Geographic Service Area (GSA) of the license. Price is the cost variable.

In the VSC lease, for example, the MHz available for lease was 22.5 MHz per license or 67.5 MHz for all three licenses¹². Since VSC must retain 5% of capacity for its future use, the MHz available for lease was 67.5 MHz x 95% = 64.125 MHz.

The population count for each of the three licenses, as determined by the engineering firm we consulted, is 137,683 in 73,330 housing units.¹³

If the multiple is, say, ten cents (\$0.10) then the formula would estimate a potential value by multiplying $\$.10 \times 64.125 \times 137,683 = \$882,892$.

(According to one expert, if the estimated lease value is acceptable to both parties, a subsequent lease could see approximately 10 percent of the value paid as an initial fee, with the rest paid over the 30-year lease period in monthly or annual fees.)

The \$483,000 that may be received by VSC for its EBS leases translates to a "price per MHz/pop" of approximately \$.055 (five and a half cents). (This does not include any estimated value for the 30,000 \$1 shares VSC is scheduled to receive as part of the transaction.)

A senior analyst at an appraisal firm has estimated that for 2006 the price per MHz/pop multiples in the EBS 2.5 GHz band were ranging "anywhere from \$0.04 to slightly over \$0.25." The higher figure would typically result from positive valuation factors listed on the previous page. The analyst noted that the 2006 average was approximately \$0.10 and the median \$0.14, with prices in the latter half of 2006 slightly higher.

¹² MHz here is analyzed according to the new FCC EBS spectrum format: each license has four channels; three will be at 5.5 MHz and one channel in the mid-band will be at 6 MHz, for a total of 22.5 MHz per license. 95 percent would be available for lease to commercial entities. Our engineer indicated that some EBS licensees break up their leases – leasing different call signs to different entities.

¹³ Using a conservative approach, the population number does not include households falling in the broadcast area of other EBS licenses that have expired. If the FCC declines to reinstate such expired licenses, the population count for the VSC licenses, which are in active status, could increase, thus increasing the value of the spectrum lease.

Another outside analyst reviewed the VSC GSA map, population count and license specifications and reported that, in the firm's view, the VSC spectrum was worth between \$0.07 and \$0.175 per MHz/pop at the time the leases were executed. [Figure 1 is the representation of the map.] The analyst said that for revenue estimation purposes, a reasonable price per MHz/pop at the time would have been \$0.125, (twelve and a half cents) or approximately \$1,103,615. "If I was advising the State of Vermont in February [2007], that's the number I would have been going after," the analyst said. The analyst noted that VSC did well to receive an initial payment of \$105,000, given the fact that initial payments for leases of rural spectrum are often in the range of \$25,000.

¹⁴ The analyst noted that values were trending upward, partly due to announcements in 2006 by Sprint Nextel and Clearwire of those companies' intentions to invest significant funds in developing services for the 2.5GHz band with WiMax technology. For example, Sprint Nextel Corp. announced on August 8, 2006 that it expected to invest \$1 billion in 2007 and up to \$2 billion in 2008 on its WiMax mobile broadband network.

Lamoille Co. Franklin Co. Caledonia Chittenden Co. Burlington, VT BTA #63 Plattsburgh, NY BTA #352 Washington Co. Essex Co. Addison/Co Orange 💋 o. Leban n-Clarement, NH BTA # Rutland Wir dsor Co. Warren Co. Mancheste Glens Falls, NY BTA #164 Sullivan Co. Rutland-Bennington, T BTA #388 Saratoga Co. Bennington Co. KeenedNth BJA #227 Cheshire Co. Schenectady Co. Rensselaer Co. Albany Co. EDX SignalPro™: WQCN270 GSA map People/ Housing Units totals 2005 U.S. Census estimates data: Within WQCN270 GSA ch. C1-4: 137,683/ 73,330 WQCN270 Rutland, VT C1-4 GSA WQCN270 Rutland, VT C1-4 PSA WQCR739 Brownsville, VT C1-4 PSA MILES WLX480 Monkton, VT C1-4 PSA WLX577 Northfield, VT C1-4 PSA WLX810 Thetford, VT C1-4 PSA **GSA Map & Population Counts** WNC235 Burlington, VT C1-4 PSA WQCN270 Rutland, VT C1-4 20070906 Exhibit 1

Figure 1: Geographical Service Area (shaded) of VSC Licenses

Source: Kessler and Gehman Associates, Inc.

Further, the chairman of the Instructional Television Fixed Spectrum association (ITFS), the non-profit organization comprised of many educational institutions with EBS licenses, indicated that the VSC price per MHz/pop figure seemed low, based on his knowledge of other leases in rural areas. However, the chairman noted that many factors come into play in a lease agreement that can affect value.

The chairman also noted that if the lease provides an under-served area with access to high-speed broadband Internet, data and telecom services, the resulting public benefit may be well worth diminished lease revenue.

PRICE COMPARISON AT REPORTED INDUSTRY PRICES/MHz/POP IN 2006-07

Price/MHz/Pop:	.04	.07	.125	.175	.25
Potential 30-year	353,157	618,025	1,103,615	1,545,061	2,207,231
revenue at various price levels					
VSC 30-year lease	483,000	483,000	483,000	483,000	483,000
revenue					
Difference	129,843	(135,025)	(620,615)	(1,062,061)	(1,724,231)

This chart shows potential 30-year revenue totals at different *prices per MHz per population*. We caution that the potential revenues expected from the Utopian Wireless Corporation lease are not guaranteed and depend upon the lessee's fulfillment of long-term lease obligations. We also note that potential revenues from other price levels are estimates only and in an alternate open bid and contract process would be subject to a number of negotiated issues.

Summary

During this review, we learned that the valuation of an EBS lease can be subject to a number of rapidly changing and complex technical and market factors. We have sought to get professional insight as to a fair market value for leasing of the three EBS licenses in February of 2007. We have received expert commentary and advice on the issue, but not a detailed professional appraisal which evaluates all potential factors. Our information suggests that VSC likely did not receive full fair market value for its licensed spectrum asset and likely would have received higher compensation through a competitive bidding process. We note also that valuations are not actual lease agreements, and that whatever a valuation may be, it remains for two

parties to negotiate and agree on the actual compensation for leasing spectrum.

Finding 3

VSC Showed Substantial Compliance with Policies & Procedures for Competitive Bidding of Selected Major Maintenance and Capital Improvement Projects

In the Capital Construction Act passed by the Vermont Legislature in 2006, the Vermont State College system was appropriated \$1.8 million for major facility maintenance.

We reviewed two projects funded by this appropriation to determine if VSC was competitively bidding the projects.

The two projects selected were:

- 1. Lyndon State College: Activities Fuel Tank Replacement (\$102,000 project cost)
- 2. Castleton State College: Math and Science Addition (\$330,000 of a total project cost \$2.2 million)

We noted that the Vermont State Colleges has a *Construction Policies and Procedures Manual* which states that a goal of its contracting methodology is to:

Ensure that all construction and renovation contracts are awarded in such a manner to ensure that VSC receives the highest quality product at the least reasonable cost; and to

Provide an open and fair contracting environment for all vendors who can demonstrate the ability to successfully perform work per VSC standards.

After a review of the contract files and discussion with the VSC Facilities Director, we noted that VSC was in substantial compliance with its policies and procedures on competitive bidding of contracts.

We noted only minor issues for improvement. For example, the policy states that "All projects with an estimated construction value between \$75,000 and \$250,000 shall be subject to Competitive Quotes ..." and that "a minimum of three quotes shall be obtained for each project award." The fuel tank replacement project was a highly specialized project, and while VSC contacted three possible vendors, only two submitted an initial price quote.

We suggested to VSC that the policy be amended to require that three quotes be solicited, rather than requiring that three quotes be obtained.

Further, we recommended that contract files include documentation of instances where VSC utilizes its right to waive informalities or irregularities in the bids received. For example, one of the fuel tank replacement bids came in one day after the closing date indicated in the request for quotations, but was accepted by VSC because it was deemed in the best interest of VSC to do so. Such decisions should be noted in the contract file.

We reviewed the bidding process for the two major components of the Castleton State College Math and Science Center, a multi-year project – the architectural design phase proposal, and the Construction Management phase contract.

Both projects were publicly advertised for bid and VSC received five proposals for the architectural contract and six proposals for the construction phase. From a review of the contract file, and a discussion with VSC personnel, it is our opinion that VSC actively sought public bids, and conducted an adequate review process to select firms for the work.

Our suggestion to management was that contract documentation could be improved. For example, one of the policies in place requires that contract documentation should clearly identify the selected bidder and the justification for the selection. A justification statement was not present in the construction management contract file.

Summary

VSC demonstrated, in our review of two selected projects, that it is competitively bidding significant facility repair and new construction projects with an eye toward receiving the best value for its dollars.