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Karen Winnick*

[Additional counsel listed on signature page.]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

T-MOBILE US, INC., *et al.*,

Plaintiffs,

vs.

WCO SPECTRUM LLC, *et al.*,

Defendants.

No. 2:23-cv-4347-CAS(Ex)
Hon. Christina A. Snyder

**Defendants WCO Spectrum
LLC, Academia Spectrum LLC,
Carl Katerndahl, Andreas
Bitzarakis, Tyler Kratz and
Karen Winnick's Answer,
Affirmative Defenses and
Counterclaims**

DEMAND FOR JURY TRIAL

1 Defendants WCO Spectrum LLC, Academia Spectrum, LLC, Carl
2 Katerndahl, Andreas Bitzarakis, Tyler Kratz, and Karen Winnick answer
3 the June 2, 2023 complaint and assert affirmative defenses and
4 counterclaims as follows:

5 **NATURE OF THE CASE**

6 1. Answering Defendants deny each and every allegation in
7 Paragraph 1, including all references to a “criminal scheme,” and all
8 claims of fraud, racketeering, unfair business practices, or violations of
9 law. T-Mobile’s allegations are false, inflammatory, and designed to crush
10 legitimate competition through intimidation and litigation.

11 In 2020, following the Federal Communications Commission’s
12 (“FCC”) rule change permitting commercial ownership of Electronic
13 Broadband Service (“EBS”) licenses, Mr. Gary Winnick and WCO
14 Spectrum’s principals developed a forward-looking plan to improve
15 spectrum efficiency in the 2.5 GHz band. The model was straightforward:
16 acquire EBS licenses as a third-party investor, affirm existing leases with
17 T-Mobile, collect rents, and ultimately take ownership when those leases
18 expire. This mirrors the strategy used by wireless carriers themselves
19 when selling off tower assets to neutral third parties—lowering capital
20 costs, improving efficiency, and expanding coverage. When spectrum
21 sharing is fully implemented in the 2.5 GHz band, consumers will benefit
22 from better network performance at lower cost—the exact kind of
23 innovation the FCC intended.

24 WCO Spectrum entered the market offering to purchase licenses
25 leased to T-Mobile, with the express intention of becoming T-Mobile’s
26 landlord—not to interfere with its network, but to facilitate market-based
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1 alternatives for educational institutions. As part of its standard practice,
2 WCO Spectrum often executed Commitment Cost Agreements alongside
3 its offers to offset legal fees and mitigate the impact of T-Mobile's
4 anticompetitive Right of First Refusal ("ROFR") clauses embedded in the
5 underlying lease agreements. These ROFRs were deliberately designed to
6 lock up licenses—prohibiting competitive telecom bidders. Additionally,
7 T-Mobile's leases included provisions that forbid the disclosure of key
8 lease terms to would-be buyers. WCO Spectrum, recognizing the uphill
9 battle, entered into the Commitment Cost Agreements as well as
10 customary non-disclosure agreements with these nonprofit schools,
11 colleges and universities to protect negotiations—standard in high-value,
12 pre-closing deals.

13
14 Despite the structural disadvantages, WCO Spectrum was poised to
15 renegotiate leases at fair market rates as they expired, disrupting T-
16 Mobile's long-held monopsony over the EBS spectrum. That disruption is
17 something that T-Mobile cannot tolerate. When WCO Spectrum entered
18 the marketplace, T-Mobile tried to pressure WCO Spectrum into price
19 fixing. WCO Spectrum refused. In response, T-Mobile implemented a
20 campaign to raise substantially the costs to both WCO Spectrum and EBS
21 license holders of transacting with each other, and to exclude WCO
22 Spectrum from the marketplace altogether. Among the many
23 anticompetitive actions T-Mobile pursued, it threatened and then often
24 sued without merit any non-profit school, college or university that dared
25 to entertain any possible sale dialogue with WCO Spectrum. That
26 intimidation strategy escalated into this so-called RICO case when WCO
27 refused to cease making offers to these non-profit educational institutions.
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1 T-Mobile's allegations in this action are baseless. Contrary to T-
2 Mobile's contentions, WCO Spectrum's offers to purchase EBS licenses
3 were legitimate—non-binding, backed by real financing, and subject to
4 due diligence. The Commitment Cost Agreements were not “kickbacks” as
5 T-Mobile characterizes them, but standard deal protections. The only
6 “scheme” here is T-Mobile's anticompetitive conduct and abuse of the legal
7 system to maintain its market dominance.

8 Furthermore, as to T-Mobile's anonymous “whistleblower,” the
9 credibility is nonexistent. There is no evidence that Answering
10 Defendants defrauded T-Mobile of “more than \$10 million.” T-Mobile
11 exercised its ROFRs voluntarily and now seeks to rewrite history because
12 it doesn't like the consequences of real competition. Finally, to the extent
13 this paragraph contains legal conclusions, no response is required. All
14 remaining allegations are expressly denied.

15 **FACTUAL BACKGROUND**

16
17 2. Answering Defendants admit that the FCC historically
18 licensed EBS spectrum to educational institutions and that the EBS band
19 occupies part of the 2496 to 2690 MHz range, commonly referred to as the
20 2.5 GHz band. Answering Defendants further admit that, prior to an FCC
21 rule change in April 2020, EBS licenses could only be held by educational
22 institutions, and that the FCC's rule change subsequently allowed
23 commercial entities to acquire and hold such licenses. Answering
24 Defendants also admit that T-Mobile has leased significant portions of
25 EBS spectrum from educational institutions, and that those leases often
26 include ROFR provisions. To the extent the remainder of this paragraph
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1 contains characterizations, implications, or allegations inconsistent with
2 the plain language of FCC rules, those are denied.

3 3. Denied. Answering Defendants incorporate their response to
4 the allegations set forth in Paragraph 1 above. Furthermore, WCO
5 Spectrum's offers were expressly non-binding and subject to due
6 diligence—a standard and necessary condition in sophisticated
7 transactions—particularly in situations such as this one where T-Mobile
8 actively blocked the dissemination of any of the underlying financial
9 information and lease/license terms. Any suggestion that WCO
10 Spectrum's non-binding offers were improper is baseless. Moreover, the
11 need for due diligence was directly caused by T-Mobile's own
12 misconduct—namely, its deliberate concealment of critical economic
13 information, which obstructed WCO Spectrum's ability to conduct full and
14 fair evaluations.
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16 4. Denied. Answering Defendants incorporate their response to
17 the allegations set forth in Paragraph 1 above. Furthermore, WCO
18 Spectrum's line of credit agreement with SCH LLC was a legitimate,
19 enforceable financial arrangement intended to support WCO Spectrum's
20 ability to engage in competitive transactions to acquire EBS licenses. The
21 agreement was not fake, fraudulent, or created to deceive, but rather
22 reflects a common and lawful business structure used to secure capital for
23 high-value acquisitions. Furthermore, SCH's entitlement to a percentage
24 fee was lawfully negotiated compensation—not a “kickback” or payment
25 for fraudulent activity. Moreover, no such payment was ever made to
26 SCH. Additionally, WCO Spectrum had established other funding
27 channels for its intended acquisition of EBS licenses.
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1 5. Denied. Answering Defendants incorporate their response to
2 the allegations set forth in Paragraph 1 above.

3 6. Denied. Answering Defendants incorporate their response to
4 the allegations set forth in Paragraph 1 above. Moreover, T-Mobile's
5 suggestion that WCO Spectrum's potential role as a future landlord would
6 somehow justify labeling WCO Spectrum's conduct as fraudulent is a
7 transparent attempt to suppress competition. T-Mobile's complaint is not
8 about fraud but rather its desire to maintain control over the EBS
9 spectrum market and to prevent other lawful market participants like
10 WCO Spectrum from giving license holders a fair and
11 competitive alternative.
12

13 7. Denied. Answering Defendants incorporate their response to
14 the allegations set forth in Paragraph 1 above. Furthermore, Answering
15 Defendants deny that non-disclosure agreements were used to conceal any
16 fraudulent scheme. Non-disclosure agreements are standard industry
17 practice in competitive business transactions, particularly in high-value
18 deals involving proprietary negotiations. The non-disclosure agreements
19 were lawful, reasonable, and did not prevent license holders from
20 disclosing relevant information where required. Furthermore, the non-
21 disclosure agreements are written documents that must be referred to for
22 their content and that speak for themselves. Answering Defendants
23 further deny that WCO Spectrum or Academia abandoned deals to
24 prevent alleged fraud from becoming public. WCO Spectrum has been
25 forced to walk away from deals due to T-Mobile's own wrongful conduct—
26 including intimidation tactics against EBS license holders and sham
27 litigation designed to obstruct legitimate business transactions. T-
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1 Mobile's attempt to reframe its own anticompetitive behavior as
2 Defendants' fraud is nothing more than a desperate effort to further stifle
3 fair market competition.

4 8. Denied. The allegations in this paragraph concerning Michael
5 Milken and Drexel Burnham Lambert are irrelevant, misleading, and
6 improperly attempt to impugn Mr. Winnick's character. The allegations
7 regarding events that occurred decades ago, in which Mr. Winnick was
8 not accused of any wrongdoing, have no connection to the claims at issue
9 and should be stricken as immaterial and prejudicial. Answering
10 Defendants admit that in 1997, Mr. Winnick founded Global Crossing
11 Limited. This pioneering telecommunications company significantly
12 reshaped the data transport industry by building one of the first global
13 fiber-optic networks. This ambitious infrastructure project, which
14 included undersea cables connecting continents over a million fiber miles,
15 introduced a new level of competition to a market previously dominated
16 by a handful of incumbent carriers. Ultimately, Global Crossing filed for
17 bankruptcy in 2002. Any allegation that Mr. Winnick engaged in improper
18 conduct is specifically denied.

19 9. Denied. The allegations in this paragraph constitute legal
20 conclusions to which no response is required and all allegations contained
21 therein are deemed denied. To the extent, if any, Paragraph 9 is deemed
22 to contain allegations of fact, Answering Defendants deny all such
23 factual allegations.
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PARTIES

10. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

11. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

12. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

13. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

14. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

15. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

16. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

17. Denied. After reasonable investigation, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny them.

1 18. Denied. After reasonable investigation, Answering Defendants
2 lack knowledge or information sufficient to form a belief as to the truth or
3 falsity of the allegations in this paragraph, and therefore deny them.

4 19. Answering Defendants admit that WCO Spectrum is a
5 Delaware limited liability company and that at all relevant times had its
6 principal office at 9355 Wilshire Boulevard, Suite 200, Beverly Hills,
7 California 90210. It is admitted that one of the many benefits WCO
8 Spectrum attempted to provide, but T-Mobile thwarted, was helping
9 license holders generate significant liquidity by selling their licenses.

10 20. Answering Defendants admit that Gary Winnick was WCO
11 Spectrum's founder. Gary Winnick has since passed away and his widow,
12 Karen Winnick, has been substituted into this case for Mr. Winnick in her
13 capacity as Trustee of the GKW Trust and as Special Administrator of the
14 Estate of Gary Winnick.

15 21. Answering Defendants admit that Katerndahl was WCO
16 Spectrum's Chief Executive Officer and Chairman, and resides in
17 Manhattan Beach, California.

18 22. Answering Defendants admit that Kratz resides in San Juan,
19 Puerto Rico. Answering Defendants deny that WCO Spectrum hired Kratz
20 to assist in implementing any "fraudulent scheme."

21 23. After reasonable investigation, Answering Defendants lack
22 knowledge or information sufficient to form a belief as to the truth or
23 falsity of SCH's formation and principal place of business. It is admitted
24 only that SCH agreed to provide financing to WCO Spectrum.
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1 24. Denied. After reasonable investigation, Answering Defendants
2 lack knowledge or information sufficient to form a belief as to the truth or
3 falsity of the allegations in this paragraph, and therefore deny them.

4 25. Denied. After reasonable investigation, Answering Defendants
5 lack knowledge or information sufficient to form a belief as to the truth or
6 falsity of the allegations in this paragraph and subparagraphs, and
7 therefore deny them.

8 26. Answering Defendants admit that Academia is a Virginia
9 limited liability company with a principal office at 294 Watch Hill Road,
10 Berlin, Connecticut 06037. Answering Defendants deny that Academia
11 aided WCO Spectrum in any “fraudulent scheme.”

12 27. Answering Defendants admit that Bitzarakis resides in Berlin,
13 Connecticut and is Academia’s principal. Answering Defendants deny
14 that Bitzarakis participated in any “fraudulent scheme” against T-Mobile.
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16 **JURISDICTION AND VENUE**

17 28. The allegations in this paragraph constitute legal conclusions
18 to which no response is required and all allegations contained therein are
19 deemed denied.

20 29. The allegations in this paragraph constitute legal conclusions
21 to which no response is required and all allegations contained therein are
22 deemed denied.

23 30. The allegations in this paragraph constitute legal conclusions
24 to which no response is required and all allegations contained therein are
25 deemed denied.
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1 31. The allegations in this paragraph constitute legal conclusions
2 to which no response is required and all allegations contained therein are
3 deemed denied.

4 **STATEMENT OF THE CASE**

5 32. Admitted.

6 33. Admitted.

7 34. Admitted.

8 35. Admitted that EBS spectrum licenses originally were only
9 allowed to be held by educational institutions. FCC rules subsequently
10 permitted educational institutions to lease their EBS spectrum rights to
11 commercial users, and most of them did so to obtain much-needed funding
12 for their schools.

13 36. Admitted.

14 37. Denied. After reasonable investigation, Answering
15 Defendants lack knowledge or information sufficient to form a belief as to
16 the truth or falsity of the allegations in this paragraph, and therefore
17 deny them.

18 38. Denied. After reasonable investigation, Answering
19 Defendants lack knowledge or information sufficient to form a belief as to
20 the truth or falsity of the allegations in this paragraph, and therefore
21 deny them.

22 39. Answering Defendants admit that T-Mobile's lease contracts
23 with EBS license holders contain a ROFR lease provision. If an EBS
24 license holder wants to sell its license, this ROFR provision grants T-
25 Mobile the right to purchase the license on the same terms as any "*bona*
26 *fide*" third-party offer received by the license holder. T-Mobile has
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1 interpreted the term “*bona fide*” so broadly as to give itself effective veto
2 power over proposed transactions with WCO Spectrum, and to require the
3 production of burdensome amounts of information before it will even
4 consider whether an offer can be deemed “*bona fide*.” Furthermore, T-
5 Mobile’s lease agreements with EBS license holders are written
6 documents that must be referred to for their content and that speak
7 for themselves.

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9 40. Denied as stated. Mr. Winnick, along with other principals of
10 WCO, conceived of a plan for efficient spectrum sharing, which
11 contemplated WCO Spectrum purchasing significant amounts of EBS
12 spectrum as a third-party investor. Under this plan, WCO Spectrum
13 would implement a model that the wireless communications carriers
14 employ: selling tower assets to third parties, thus bringing down the
15 overall cost of capital to operate a network. By selling tower assets to
16 neutral third parties, fewer towers are needed, creating efficiencies and
17 superior coverage at the same time—improved network quality at a lower
18 cost. When spectrum sharing is ultimately deployed in the 2.5 GHz band,
19 the result will be more efficient utilization of spectrum and benefits to
20 consumers in network quality, as well as reductions in the cost of
21 delivering data.

22 41. Answering Defendants admit only that WCO Spectrum was
23 formed in Delaware on June 12, 2020, Mr. Winnick founded WCO
24 Spectrum, Katerndahl served as a senior executive and Kratz served as
25 a consultant.

26 42. Denied. Answering Defendants incorporate their response to
27 the allegations set forth in Paragraph 1 above. Furthermore, WCO
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1 Spectrum's offers were expressly non-binding and subject to due
2 diligence—a standard and necessary condition in sophisticated
3 transactions. Any suggestion that WCO Spectrum's non-binding offers or
4 associated fees were improper is baseless. Moreover, the need for due
5 diligence was directly caused by T-Mobile's own misconduct—namely, its
6 deliberate concealment of critical economic information for the underlying
7 leases and licenses, which substantially frustrated and obstructed WCO
8 Spectrum's ability to conduct full and fair evaluations.

9
10 43. Denied. WCO Spectrum lawfully obtained certain of T-
11 Mobile's lease agreements through public records requests, a standard
12 and legally permissible method for gathering publicly available
13 information. The assertion that WCO Spectrum used Parkview
14 Consulting ("Parkview") to "hide its involvement" is patently false.
15 Parkview submitted requests in its own name as a matter of ordinary
16 course, not to obscure WCO Spectrum's role. Furthermore, T-Mobile's
17 claim that these lease agreements are "confidential" is disingenuous—
18 they were publicly accessible through legitimate legal channels and in
19 some instances had been publicly available on college and university
20 related websites.

21 44. Answering Defendants admit only that WCO Spectrum
22 attempted to purchase Albright's EBS spectrum license. After reasonable
23 investigation, Answering Defendants lack knowledge or information
24 sufficient to form a belief as to the truth or falsity of the allegations in
25 this paragraph concerning TDI and Albright's relationship, and therefore
26 deny them.

27 45. Denied. Answering Defendants incorporate their response to
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1 the allegations set forth in Paragraph 1 above.

2 46. Denied. The “deal memo” is a written document that must be
3 referred to for its content and that speaks for itself.

4 47. Answering Defendants admit that WCO Spectrum offered to
5 purchase Albright’s EBS license for \$16,200,000—which would have
6 funded scholarships and numerous programs for this underfunded
7 minority-focused college. Answering Defendants further admit that TDI’s
8 lease with Albright contained a so-called “Right to Participate” provision,
9 which in reality served as a weapon to maintain T-Mobile’s monopsony
10 power by imposing an extreme and unjustified burden on Albright. This
11 provision forced Albright to produce an exorbitant amount of
12 documentation whenever it received a bid, offer, or proposal for its EBS
13 license—an onerous requirement designed to chill competition and
14 obstruct legitimate transactions. T-Mobile’s litigation against Albright
15 was a sham—a pretext to intimidate Albright as well as other educational
16 institutions considering deals with WCO Spectrum and to exploit third-
17 party subpoenas for invasive competitive intelligence on WCO Spectrum
18 and Academia. Notably, T-Mobile never even required Albright to answer
19 the complaint, nor did it seek to compel discovery directed to Albright—
20 further exposing the case for what it was: a calculated intimidation tactic.
21 By way of further response, the non-binding term sheet, ROFR notice and
22 the agreement between TDI and Albright are written documents that
23 must be referred to for their content and that speak for themselves.
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25 48. Admitted only that while T-Mobile’s action against Albright
26 (the “Albright Case”) was pending, T-Mobile conveniently claimed that an
27 anonymous “whistleblower” suddenly emerged—out of nowhere—calling
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1 T-Mobile's counsel on his personal cell phone and spinning a tale about
2 WCO Spectrum's alleged fraudulent "scheme."

3 49. Denied. Answering Defendants expressly deny the existence of
4 any fraudulent "scheme" as alleged. Answering Defendants incorporate
5 their response to the allegations set forth in Paragraph 1 above.

6 50. Denied. Answering Defendants incorporate their responses to
7 the allegations set forth in Paragraphs 1 and 4 above.

8 51. Denied. Answering Defendants incorporate their response to
9 the allegations set forth in Paragraph 49 above. Furthermore, the four-
10 page narrative is a written document that must be referred to for its
11 content and that speaks for itself.

12 52. Denied. Answering Defendants deny each and every allegation
13 in this paragraph and its subparts (a) through (f), including the
14 unsupported claim that WCO Spectrum, Academia, or any of their
15 affiliates engaged in fraud, obstruction, or the presentation of sham
16 offers. The communications and documents produced in the Albright Case
17 do not corroborate the so-called "whistleblower's" narrative; rather, they
18 reflect lawful, well-documented business practices surrounding WCO
19 Spectrum's efforts to acquire EBS licenses through competitive, market-
20 based offers. Academia, through its principal, Bitzarakis, acted as a
21 legitimate broker, facilitating initial outreach to license holders on behalf
22 of WCO Spectrum. There was nothing deceptive or improper about
23 these communications.
24

25 a. Answering Defendants admit that Bitzarakis, on behalf of
26 WCO Spectrum, contacted Albright regarding a potential sale
27 of its EBS licenses. These communications were transparent,
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- 1 professional, and lawful—not fraudulent.
- 2 b. Answering Defendants deny that any negotiations were
- 3 improper. Like any sophisticated commercial transaction,
- 4 WCO Spectrum and its representatives engaged in standard
- 5 back-and-forth communications with Albright and its counsel.
- 6 c. The non-disclosure agreement at issue was a lawful, narrowly
- 7 tailored confidentiality agreement that explicitly permitted
- 8 disclosure to T-Mobile where contractually required. The non-
- 9 disclosure agreement speaks for itself and undermines T-
- 10 Mobile’s allegation that any material information was
- 11 concealed.
- 12 d. Answering Defendants deny the existence of any supposed
- 13 “kickback.” The “DD & Costs Fee” referenced in internal
- 14 communications refers to a Commitment Cost Agreement—a
- 15 common, risk-mitigation mechanism designed to protect WCO
- 16 Spectrum from losing its investment of time and resources if
- 17 T-Mobile exercised its ROFR after WCO Spectrum initiated
- 18 and advanced a deal.
- 19 e. WCO Spectrum’s offer to Albright was a legitimate, non-
- 20 binding offer, clearly marked as such and supported by real
- 21 financing. The fact that the offer exceeded an earlier internal
- 22 valuation is not evidence of fraud—it reflects a dynamic
- 23 negotiation process. All disclosures in the offer letter and
- 24 Commitment Cost Agreement were clear, and the documents
- 25 expressly allowed disclosure to T-Mobile as required under
- 26 the lease.
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1 f. Answering Defendants deny that the offer presented to T-
2 Mobile was false or misleading. WCO Spectrum was fully
3 prepared to consummate the transaction if T-Mobile declined
4 to exercise its ROFR. The offer was backed by legitimate
5 financing, and the 10% commitment fee was not a “kickback,”
6 but a lawfully negotiated term designed to prevent
7 opportunistic interference by T-Mobile after WCO Spectrum
8 had advanced the deal.

9
10 53. Denied. Answering Defendants expressly deny WCO
11 Spectrum engaged in any alleged fraudulent scheme. Furthermore, WCO
12 Spectrum’s website is a written document that must be referred to for its
13 content and that speaks for itself.

14 54. Denied. Answering Defendants deny the allegations in this
15 paragraph in their entirety, including the false and misleading
16 characterization of WCO Spectrum’s business strategy and the
17 statements made by its counsel during the Albright Case. WCO Spectrum
18 has never acted as a “stalking horse” in any improper or deceptive sense,
19 nor has it engaged in any scheme to coerce T-Mobile into action through
20 “sham” offers. The reference to a stalking horse analogy was made to
21 illustrate a well-accepted commercial concept: that parties who expend
22 substantial time and resources conducting due diligence and negotiating
23 potential transactions may, in certain cases, be entitled to compensation
24 if another party—here, T-Mobile—steps in and acquires the asset after
25 the groundwork has been laid.

26 Furthermore, WCO Spectrum’s use of Commitment Cost
27 Agreements was lawful, reasonable, and designed to mitigate risk—not
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1 to extort or deceive. The 10% commitment fee reflects the considerable
2 effort WCO Spectrum invested in each transaction. The assertion that
3 WCO Spectrum made non-binding offers to “coerce” T-Mobile, while
4 bearing no risk, is false and unsupported. WCO Spectrum’s offers were
5 legitimate and subject to customary due diligence conditions because T-
6 Mobile routinely withholds critical economic information necessary to
7 fully evaluate the transactions.

8
9 55. Denied. Defendants specifically deny the existence of any
10 “scheme” and reject the characterization that their business activities are
11 fraudulent or improper. WCO Spectrum’s offers to acquire EBS licenses
12 were made in good faith, in the ordinary course of legitimate competitive
13 business conduct, and reflect the value of the underlying spectrum
14 assets—not any fraudulent intent. The total value of offers extended is
15 not evidence of wrongdoing, but rather a reflection of WCO Spectrum’s
16 commitment to building a robust portfolio of EBS licenses nationwide.
17 Moreover, WCO Spectrum’s financing was and is legitimate, and the
18 suggestion that WCO Spectrum cannot follow through on its offers is
19 baseless and intentionally misleading. WCO Spectrum was backed by a
20 bona fide line of credit and fully intended to complete any transactions
21 accepted by license holders.

22 56. Denied. The allegations in this paragraph constitute legal
23 conclusions to which no response is required and all allegations contained
24 therein are deemed denied. To the extent, if any, Paragraph 56 is deemed
25 to contain allegations of fact, Answering Defendants deny all such factual
26 allegations. Answering Defendants incorporate their responses to the
27 allegations set forth in Paragraphs 1 and 4 above.
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1 57. Denied. The allegations in this paragraph constitute legal
2 conclusions to which no response is required and all allegations contained
3 there are deemed denied. To the extent, if any, Paragraph 57 is deemed
4 to contain allegations of fact, Answering Defendants deny all such factual
5 allegations. Answering Defendants incorporate their responses to the
6 allegations set forth in Paragraph 1 above. By way of further response,
7 the offer letters are written documents that must be referred to for their
8 content and that speak for themselves.

9
10 58. Admitted only that WCO Spectrum was interested in
11 acquiring La Roche's EBS license. Answering Defendants incorporate
12 their responses to the allegations set forth in Paragraphs 40 and 41 above.

13 59. Denied. After reasonable investigation, Answering
14 Defendants lack knowledge or information sufficient to form a belief as to
15 the truth or falsity of the allegations in this paragraph, and therefore
16 deny them. Furthermore, the lease agreement between T-Mobile and La
17 Roche is a written document that must be referred to for its content and
18 that speaks for itself.

19 60. Denied. Answering Defendants expressly deny WCO
20 Spectrum had no intention of honoring the offer to La Roche if T-Mobile
21 chose not to exercise its ROFR. Moreover, the October 27, 2020, email
22 from Katerndahl to La Roche is a written document that must be referred
23 to for its content, and that speaks for itself.

24 61. Denied. The November 12, 2020 email from La Roche to T-
25 Mobile, November 13, 2020 email from La Roche to T-Mobile, ROFR
26 notice, and WCO Spectrum's offer letter are written documents that must
27 be referred to for their content and that speak for themselves.
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1 62. Denied. After reasonable investigation, Answering
2 Defendants lack knowledge or information sufficient to form a belief as to
3 the truth or falsity of the allegations in this paragraph concerning the
4 information exchanged between T-Mobile and La Roche, and therefore
5 deny them. Answering Defendants specifically deny Mr. Winnick made
6 false statements to T-Mobile’s representatives. Rather, Mr. Winnick’s
7 statements accurately reflect WCO Spectrum’s mission. Furthermore, the
8 December 17, 2020, email from T-Mobile to La Roche’s counsel and the
9 December 24, 2020, email from La Roche’s counsel to T-Mobile are written
10 documents that must be referred to for their content and that speak
11 for themselves.

12 63. Denied. The allegations in this paragraph mischaracterize
13 lawful business negotiations as fraudulent and incorrectly attribute T-
14 Mobile’s own independent business decisions to supposed coercion. T-
15 Mobile was not “coerced” into exercising its ROFR for the La Roche license
16 or any other license. Rather, T-Mobile had full discretion to evaluate WCO
17 Spectrum’s offer and either match or decline it based on its own
18 assessment of the value of the license. T-Mobile voluntarily chose to
19 exercise its ROFR. Furthermore, Answering Defendants categorically
20 deny the baseless claim that they received a \$1.3 million “kickback” or
21 any other improper payment. All payments received by WCO Spectrum
22 were structured to mitigate the risk that, after WCO Spectrum invested
23 significant time and resources in securing a deal, another entity—such as
24 T-Mobile—could exploit WCO Spectrum’s efforts and outbid it at the last
25 moment. Such risk-mitigation mechanisms are standard in competitive
26 business transactions and do not constitute wrongful conduct.
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1 64. Denied. Answering Defendants incorporate their response to
2 the allegations set forth in Paragraph 63 above.

3 65. Denied. Answering Defendants deny that non-disclosure
4 agreements were used to conceal fraud. Non-disclosure agreements are
5 standard industry practice in competitive business transactions,
6 particularly in high-value deals involving proprietary negotiations. The
7 non-disclosure agreements were lawful, reasonable, and did not prevent
8 license holders from disclosing relevant information where required.
9 Furthermore, the non-disclosure agreements are written documents that
10 must be referred to for their content and that speak for themselves.

11 66. Denied. T-Mobile's allegations are a gross misrepresentation of
12 the events surrounding the Albright Case and yet another example of T-
13 Mobile's campaign to weaponize litigation and discovery in an effort to
14 stifle competition. Tellingly, T-Mobile never even required Albright—the
15 **only** named defendant—to answer the complaint. Nor did T-Mobile move
16 to compel discovery from Albright. The lawsuit was never about enforcing
17 contractual rights—it was a transparent intimidation tactic designed to
18 punish Albright for engaging with WCO Spectrum, to scare off other EBS
19 license holders, and to use the court system as a fishing expedition to
20 extract proprietary business information from WCO Spectrum
21 and Academia.

22 To stop T-Mobile's abusive and anticompetitive discovery campaign,
23 Albright and WCO Spectrum made binding representations to the Berks
24 County court that the transaction would not be completed, thereby
25 rendering the case moot. But even after the deal was off the table, T-Mobile
26 persisted, pressing its multi-jurisdictional subpoenas in Delaware and
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1 Virginia to continue its intrusive and irrelevant discovery efforts—not to
2 litigate the mooted claims, but to gather intelligence about WCO
3 Spectrum’s business model, acquisition strategy, and financing. T-Mobile
4 initiated and dragged out multiple hearings in Delaware and Virginia
5 solely to drive up litigation costs and interfere with WCO Spectrum’s
6 operating ability. Despite this, WCO Spectrum and Academia successfully
7 limited the discovery scope to documents relevant to the underlying
8 transaction. They nevertheless ultimately produced over 11,000 pages of
9 documents related to WCO Spectrum’s potential acquisition of Albright
10 College’s EBS license.

11 67. Denied as stated. Answering Defendants admit that WCO
12 Spectrum made a bona fide offer to purchase the St. Lucie County School
13 Board’s two EBS licenses for \$7,550,000. This offer was legitimate, made
14 in good faith, and reflected WCO Spectrum’s continued efforts to provide
15 EBS license holders with competitive alternatives to T-Mobile’s
16 longstanding market dominance. In response, T-Mobile predictably
17 resorted to litigation threats and obstruction tactics, ultimately filing a
18 lawsuit to block the transaction under the guise of enforcing lease
19 provisions. By then, WCO Spectrum was already defending itself in the
20 Albright Case—another baseless action orchestrated by T-Mobile to
21 suppress competition and harass EBS license holders considering deals
22 with WCO Spectrum. Faced with yet another transparent attempt by T-
23 Mobile to misuse the judicial system by imposing costs and a direct
24 anticompetitive restraint on WCO Spectrum, WCO Spectrum withdrew
25 its offer, thereby rendering the St. Lucie case moot.

26 68. Denied. T-Mobile’s allegations are nothing more than a
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1 convoluted, baseless narrative designed to distort the facts and discredit
2 WCO Spectrum's legitimate business activities. WCO Spectrum's
3 purchase of the Owasso Public School system's EBS license was a bona
4 fide, arms-length transaction—not a “cover-up.” In reality, WCO
5 Spectrum would have acquired significantly more EBS licenses had T-
6 Mobile not engaged in anticompetitive, monopsonistic conduct and a
7 campaign of intimidation and litigation warfare—a calculated effort to
8 deter license holders from working with WCO Spectrum. T-Mobile's
9 claims are nothing more than a desperate attempt to obscure their own
10 anticompetitive conduct by fabricating a “fraud” where none exists. WCO
11 Spectrum's transaction with Owasso reflects its genuine intent and
12 ability to acquire spectrum licenses, which directly contradicts the false
13 claims made by T-Mobile.

14
15 69. Denied. The allegations in this paragraph constitute legal
16 conclusions to which no response is required and all allegations contained
17 therein are deemed denied. To the extent, if any, Paragraph 69 is deemed
18 to contain allegations of fact, Answering Defendants deny all such factual
19 allegations.

20 70. Denied. Answering Defendants incorporate their responses to
21 the allegations set forth in Paragraphs 1 and 4 above.

22 71. Answering Defendants admit only that Mr. Winnick founded
23 WCO and Katerndahl served as WCO Spectrum's Chief Executive Officer
24 and Chairman. Answering Defendants incorporate their response to the
25 allegations set forth in Paragraph 1 above. Furthermore, the
26 Commitment Cost Agreements and offer letters are written documents
27 that must be referred to for their content and that speak for themselves.
28

1 72. Denied. Answering Defendants incorporate their response to
2 the allegations set forth in Paragraph 1 above. Furthermore, WCO
3 Spectrum's "Investment Committee" was never formalized, and Kratz
4 never attended any meetings.

5 73. Denied. Answering Defendants incorporate their response to
6 the allegations set forth in Paragraph 1 above. Furthermore, the
7 Commitment Cost Agreements and non-disclosure agreements are
8 written documents that must be referred to for their content and that
9 speak for themselves.

10 74. Denied. Answering Defendants incorporate their responses to
11 the allegations set forth in Paragraphs 1 and 4 above. Furthermore, the
12 credit agreement is a written document that must be referred to for its
13 content and that speaks for itself.

14 75. Denied. The allegations in this paragraph are irrelevant,
15 misleading, and improperly attempt to impugn Mr. Winnick's character.
16 The allegations regarding events that occurred decades ago, in which Mr.
17 Winnick was not accused of any wrongdoing, have no connection to the
18 claims at issue and should be stricken as immaterial and prejudicial.

19 76. Answering Defendants admit that in 1997, Mr. Winnick
20 founded Global Crossing Limited. This pioneering telecommunications
21 company significantly reshaped the data transport industry by building
22 one of the first global fiber-optic networks. This ambitious infrastructure
23 project, which included undersea cables connecting continents over a
24 million fiber miles, introduced a new level of competition to a market
25 previously dominated by a handful of incumbent carriers. Ultimately,
26 Global Crossing filed for bankruptcy in 2002. Any allegation that Mr.
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1 Winnick engaged in improper conduct is specifically denied.

2 77. Answering Defendants admit only that these two cases were
3 settled, and Mr. Winnick offered to contribute to the settlement.
4 Answering Defendants incorporate their response to the allegations set
5 forth in Paragraph 76 above. Furthermore, the complaints are written
6 documents that must be referred to for their content and that speak for
7 themselves.

8 78. Answering Defendants admit only that Mr. Winnick has been
9 a party to other lawsuits. Answering Defendants expressly deny any
10 wrongdoing by Mr. Winnick.

11 79. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied. To the extent, if any, Paragraph 79 is deemed
14 to contain allegations of fact, Answering Defendants deny all such factual
15 allegations. Answering Defendants incorporate their responses to the
16 allegations set forth in Paragraphs 1, 48 and 49 above.

17 80. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 80 is deemed
20 to contain allegations of fact, Answering Defendants deny all such factual
21 allegations. Answering Defendants incorporate their responses to the
22 allegations set forth in Paragraphs 1, 7 and 66 above.

23 81. Denied. The allegations in this paragraph constitute legal
24 conclusions to which no response is required and all allegations contained
25 therein are deemed denied. To the extent, if any, Paragraph 81 is deemed
26 to contain allegations of fact, Answering Defendants deny all such
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1 factual allegations.

2 **CLAIMS FOR RELIEF**

3 **COUNT I**

4 **(Violations of RICO, 18 U.S.C. § 1962(c) – Against All Defendants)**

5 82. Answering Defendants repeat and incorporate their responses
6 to the allegations set forth in Paragraphs 1 through 81 above as if fully
7 set forth herein.

8 83. Denied. The allegations in this paragraph constitute legal
9 conclusions to which no response is required and all allegations contained
10 therein are deemed denied.

11 84. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied.

14 85. Denied. The allegations in this paragraph constitute legal
15 conclusions to which no response is required and all allegations contained
16 therein are deemed denied. To the extent, if any, Paragraph 85 is deemed
17 to contain allegations of fact, Answering Defendants deny all such factual
18 allegations.

19 86. Answering Defendants admit that WCO Spectrum, SCH and
20 Academia are distinct entities, with their own independent existence and
21 functions.

22 87. Answering Defendants admit that WCO Spectrum is
23 organized under the laws of Delaware and conducts business in
24 California, and that its mission is to create maximum value for EBS
25 spectrum license holders. Answering Defendants further admit that Gary
26 Winnick was WCO Spectrum's founder, Katerndahl was its CEO and
27 Chairman, and Kratz provides consulting services to WCO Spectrum.
28

1 Answering Defendants deny T-Mobile’s misleading characterizations and
2 omissions. Academia is a legitimate and respected participant in the
3 spectrum market, not merely a “middleman,” but an entity that works to
4 facilitate fair market transactions for EBS license holders. Academia is
5 organized under the laws of Virginia and operates lawfully in multiple
6 jurisdictions, including Connecticut. Further, SCH maintains a bona fide
7 revolving line of credit to WCO Spectrum—a fact that T-Mobile
8 deliberately misrepresents in an attempt to cast unwarranted suspicion
9 on lawful business activities. Moreover, WCO Spectrum had established
10 other funding channels for its intended acquisition of EBS licenses.

11 88. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied. To the extent, if any, Paragraph 88 is deemed
14 to contain allegations of fact, Answering Defendants deny all such factual
15 allegations. Answering Defendants incorporate their responses to the
16 allegations set forth in Paragraph 1 above.

17 89. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 89 is deemed
20 to contain allegations of fact, Answering Defendants deny all such factual
21 allegations.

22 90. Denied. The allegations in this paragraph constitute legal
23 conclusions to which no response is required and all allegations contained
24 therein are deemed denied. To the extent, if any, Paragraph 90 is deemed
25 to contain allegations of fact, Answering Defendants deny all such factual
26 allegations. Answering Defendants incorporate their responses to the
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1 allegations set forth in Paragraphs 1 and 41 above.

2 91. Denied. Answering Defendants deny each and every allegation
3 in Paragraph 91 and its subparts (a) through (h). The allegations are a
4 baseless and inflammatory narrative constructed to mischaracterize
5 lawful business practices as a “fraudulent scheme.” Answering
6 Defendants specifically deny that there is or ever was an “Enterprise” as
7 defined or described in this paragraph. The individuals and entities
8 referenced—including WCO Spectrum and its officers, its consultant
9 Kratz, Academia and its principal Bitzarakis, SCH and its principal
10 Vasudevan—operate as independent, legitimate business actors, each
11 engaged in lawful commercial activity within the EBS spectrum market.
12

13 a. Mr. Winnick, as founder of WCO Spectrum, did not maintain
14 “command and control” of any so-called “Enterprise.” His role
15 was to support WCO Spectrum’s lawful business mission: to
16 acquire EBS licenses through legitimate, market-based
17 offers—not to participate in or orchestrate fraud. The
18 allegation that he has received “kickbacks” is false and
19 unsupported by any credible evidence.

20 b. Katerndahl, as CEO and Chairman of WCO Spectrum, acted
21 solely within the scope of his corporate responsibilities to
22 advance WCO Spectrum’s legal business objectives. He has
23 never engaged in or directed fraudulent conduct. The
24 allegation that he has received “kickbacks” is false and
25 unsupported by any credible evidence.

26 c. Kratz is not, and never was, a principal of WCO Spectrum and
27 did not serve on any “Investment Committee” as such
28

1 committee was never formalized. Moreover, Kratz had no role
2 in securing financing or attending any meetings with
3 financiers. Kratz did not direct any conspirators, and his
4 consulting work for WCO Spectrum was lawful and unrelated
5 to any alleged fraud. The allegation that he has received
6 “kickbacks” is false and unsupported by any credible evidence.

7 d. WCO Spectrum has conducted its business openly and
8 lawfully, engaging in bona fide negotiations with EBS license
9 holders and pursuing legitimate transactions to acquire
10 licenses. WCO Spectrum denies that it has made “sham
11 offers,” entered into any unlawful agreements, or concealed
12 information from T-Mobile. All agreements and negotiations
13 were market-based, transparent to counterparties, and
14 subject to standard confidentiality protocols.

15 e.–f. Academia and its principal, Bitzarakis, have not
16 participated in any scheme to defraud T-Mobile. They act as
17 legitimate brokers in the spectrum market and have merely
18 facilitated lawful introductions and negotiations between
19 WCO Spectrum and license holders. The suggestion that they
20 “negotiated kickbacks” or concealed information is
21 categorically false.

22 g.–h. The line of credit provided to WCO Spectrum was
23 legitimate and properly documented. The allegation that the
24 credit agreement was a sham or used to further a criminal
25 scheme is false, and unsupported by any factual basis.

26
27 92. Denied. The allegations in this paragraph constitute legal
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1 conclusions to which no response is required and all allegations contained
2 therein are deemed denied. To the extent, if any, Paragraph 92 is deemed
3 to contain allegations of fact, Answering Defendants deny all such factual
4 allegations. Answering Defendants incorporate their response to the
5 allegations set forth in Paragraph 1 above.

6 93. Denied. The allegations in this paragraph constitute legal
7 conclusions to which no response is required and all allegations contained
8 therein are deemed denied. To the extent, if any, Paragraph 93 is deemed
9 to contain allegations of fact, Answering Defendants deny all such factual
10 allegations. Answering Defendants incorporate their response to the
11 allegations set forth in Paragraph 1 above.

12 94. Denied. The allegations in this paragraph constitute legal
13 conclusions to which no response is required and all allegations contained
14 therein are deemed denied. To the extent, if any, Paragraph 94 is deemed
15 to contain allegations of fact, Answering Defendants deny all such factual
16 allegations. Answering Defendants incorporate their responses to the
17 allegations set forth in Paragraphs 1 and 41 above.

18 95. Denied. The allegations in this paragraph constitute legal
19 conclusions to which no response is required and all allegations contained
20 therein are deemed denied. To the extent, if any, Paragraph 95 is deemed
21 to contain allegations of fact, Answering Defendants deny all such factual
22 allegations. Answering Defendants incorporate their response to the
23 allegations set forth in Paragraph 1 above.

24 96. Denied. The allegations in this paragraph constitute legal
25 conclusions to which no response is required and all allegations contained
26 therein are deemed denied. To the extent, if any, Paragraph 96 is deemed
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1 to contain allegations of fact, Answering Defendants deny all such factual
2 allegations. Answering Defendants incorporate their responses to the
3 allegations set forth in Paragraphs 1 and 4 above.

4 97. Denied. The allegations in this paragraph constitute legal
5 conclusions to which no response is required and all allegations contained
6 therein are deemed denied. To the extent, if any, Paragraph 97 is deemed
7 to contain allegations of fact, Answering Defendants deny all such factual
8 allegations. Answering Defendants incorporate their responses to the
9 allegations set forth in Paragraphs 1 and 4 above.

10 98. Denied. The allegations in this paragraph constitute legal
11 conclusions to which no response is required and all allegations contained
12 therein are deemed denied. To the extent, if any, Paragraph 98 and its
13 subparts (a) through (e) are deemed to contain allegations of fact,
14 Answering Defendants deny all such factual allegations. Answering
15 Defendants incorporate their responses to the allegations set forth in
16 Paragraph 1 above.

17 99. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 99 is deemed
20 to contain allegations of fact, Answering Defendants deny all such factual
21 allegations.

22 100. Denied. The allegations in this paragraph constitute legal
23 conclusions to which no response is required and all allegations contained
24 therein are deemed denied. Furthermore, T-Mobile's lease agreements
25 with EBS license holders are written documents that must be referred to
26 for their content and that speak for themselves. To the extent, if any,
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1 Paragraph 100 is deemed to contain allegations of fact, Answering
2 Defendants deny all such factual allegations.

3 101. Denied. The allegations in this paragraph constitute legal
4 conclusions to which no response is required and all allegations contained
5 therein are deemed denied. To the extent, if any, Paragraph 101 is
6 deemed to contain allegations of fact, Answering Defendants deny all such
7 factual allegations.

8 102. Denied. The allegations in this paragraph constitute legal
9 conclusions to which no response is required and all allegations contained
10 therein are deemed denied. To the extent, if any, Paragraph 102 is
11 deemed to contain allegations of fact, Answering Defendants deny all such
12 factual allegations.

13 103. Denied. The allegations in this paragraph constitute legal
14 conclusions to which no response is required and all allegations contained
15 therein are deemed denied. To the extent, if any, Paragraph 103 is
16 deemed to contain allegations of fact, Answering Defendants deny all such
17 factual allegations.

18
19 **COUNT II**
20 **(Conspiracy to Violate RICO, 18 U.S.C. § 1962(d)**
21 **Against All Defendants)**

22 104. Answering Defendants repeat and incorporate their responses
23 to the allegations set forth in Paragraphs 1 through 103 above as if fully
24 set forth herein.

25 105. Denied. The allegations in this paragraph constitute legal
26 conclusions to which no response is required and all allegations contained
27 therein are deemed denied. To the extent, if any, Paragraph 105 is
28 deemed to contain allegations of fact, Answering Defendants deny all such

1 factual allegations.

2 106. Denied. The allegations in this paragraph constitute legal
3 conclusions to which no response is required and all allegations contained
4 therein are deemed denied. To the extent, if any, Paragraph 106 is
5 deemed to contain allegations of fact, Answering Defendants deny all such
6 factual allegations.

7 107. Denied. The allegations in this paragraph constitute legal
8 conclusions to which no response is required and all allegations contained
9 therein are deemed denied. To the extent, if any, Paragraph 107 is
10 deemed to contain allegations of fact, Answering Defendants deny all such
11 factual allegations.

12 108. Denied. The allegations in this paragraph constitute legal
13 conclusions to which no response is required and all allegations contained
14 therein are deemed denied. To the extent, if any, Paragraph 108 is
15 deemed to contain allegations of fact, Answering Defendants deny all such
16 factual allegations.

17 109. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 109 is
20 deemed to contain allegations of fact, Answering Defendants deny all such
21 factual allegations.

22 110. Denied. The allegations in this paragraph constitute legal
23 conclusions to which no response is required and all allegations contained
24 therein are deemed denied. To the extent, if any, Paragraph 110 is
25 deemed to contain allegations of fact, Answering Defendants deny all such
26 factual allegations.
27
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COUNT III
(Fraud – Against All Defendants)

111. Answering Defendants repeat and incorporate their responses to the allegations set forth in Paragraphs 1 through 110 above as if fully set forth herein.

112. Denied. The allegations in this paragraph constitute legal conclusions to which no response is required and all allegations contained therein are deemed denied. To the extent, if any, Paragraph 112 is deemed to contain allegations of fact, Answering Defendants deny all such factual allegations. Answering Defendants incorporate their responses to the allegations set forth in Paragraphs 1 and 4 above. Additionally, Answering Defendants deny that Academia, its principal Bitzarakis, or Kratz were principals of WCO Spectrum or had any role in WCO Spectrum's financing arrangements. None of these parties attended calls or meetings with any potential financiers or played any role in WCO Spectrum's financing.

113. Denied. The allegations in this paragraph constitute legal conclusions to which no response is required and all allegations contained therein are deemed denied. To the extent, if any, Paragraph 113 is deemed to contain allegations of fact, Answering Defendants deny all such factual allegations. Answering Defendants incorporate their responses to the allegations set forth in Paragraphs 1, 4 and 112 above.

114. Denied. The allegations in this paragraph constitute legal conclusions to which no response is required and all allegations contained therein are deemed denied. To the extent, if any, Paragraph 114 is deemed to contain allegations of fact, Answering Defendants deny all such

1 factual allegations. Answering Defendants incorporate their responses to
2 the allegations set forth in Paragraphs 1, 4 and 112 above.

3 115. Denied. The allegations in this paragraph constitute legal
4 conclusions to which no response is required and all allegations contained
5 therein are deemed denied. To the extent, if any, Paragraph 115 is
6 deemed to contain allegations of fact, Answering Defendants deny all such
7 factual allegations. Answering Defendants incorporate their responses to
8 the allegations set forth in Paragraphs 1, 4 and 112 above.

9 116. Denied. The allegations in this paragraph constitute legal
10 conclusions to which no response is required and all allegations contained
11 therein are deemed denied. To the extent, if any, Paragraph 116 is
12 deemed to contain allegations of fact, Answering Defendants deny all such
13 factual allegations. Answering Defendants incorporate their responses to
14 the allegations set forth in Paragraphs 1, 4 and 112 above.

15 117. Denied. The allegations in this paragraph constitute legal
16 conclusions to which no response is required and all allegations contained
17 therein are deemed denied. To the extent, if any, Paragraph 117 is
18 deemed to contain allegations of fact, Answering Defendants deny all such
19 factual allegations. Answering Defendants incorporate their responses to
20 the allegations set forth in Paragraphs 1, 4 and 112 above.

21 118. Denied. The allegations in this paragraph constitute legal
22 conclusions to which no response is required and all allegations contained
23 therein are deemed denied. To the extent, if any, Paragraph 118 is
24 deemed to contain allegations of fact, Answering Defendants deny all such
25 factual allegations. Answering Defendants incorporate their responses to
26 the allegations set forth in Paragraphs 1, 4 and 112 above.
27
28

COUNT IV

(Aiding and Abetting Fraud – Against Defendants Winnick, Katerndahl, Kratz, Academia, Bitzarakis, SCH, and Vasudevan)

119. Answering Defendants repeat and incorporate their responses to the allegations set forth in Paragraphs 1 through 118 above as if fully set forth herein.

120. Denied. The allegations in this paragraph constitute legal conclusions to which no response is required and all allegations contained therein are deemed denied. Answering Defendants specifically deny that Winnick, Katerndahl, or Kratz were involved in any scheme to defraud T-Mobile or that they knowingly submitted false offers. Answering Defendants further deny that any offers made by WCO Spectrum were fraudulent or improper in any way. Moreover, Answering Defendants deny that Kratz was a principal of WCO Spectrum or had any decision-making authority over WCO Spectrum's operations. Answering Defendants incorporate their responses to the allegations set forth in Paragraph 1 above.

121. Denied. The allegations in this paragraph constitute legal conclusions to which no response is required and all allegations contained therein are deemed denied. To the extent, if any, Paragraph 121 is deemed to contain allegations of fact, Answering Defendants deny all such factual allegations. Answering Defendants incorporate their responses to the allegations set forth in Paragraphs 1 and 120 above. Furthermore, the non-disclosure agreements are written documents that must be referred to for their content and that speak for themselves.

122. Denied. The allegations in this paragraph constitute legal

1 conclusions to which no response is required and all allegations contained
2 therein are deemed denied. To the extent, if any, Paragraph 122 is
3 deemed to contain allegations of fact, Answering Defendants deny all such
4 factual allegations. Answering Defendants incorporate their responses to
5 the allegations set forth in Paragraphs 1 and 4 above.

6 123. Denied. The allegations in this paragraph constitute legal
7 conclusions to which no response is required and all allegations contained
8 therein are deemed denied. To the extent, if any, Paragraph 123 is
9 deemed to contain allegations of fact, Answering Defendants deny all such
10 factual allegations. Answering Defendants incorporate their response to
11 the allegations set forth in Paragraph 1 above.

12 124. Denied. The allegations in this paragraph constitute legal
13 conclusions to which no response is required and all allegations contained
14 therein are deemed denied. To the extent, if any, Paragraph 124 is
15 deemed to contain allegations of fact, Answering Defendants deny all such
16 factual allegations.

17
18 **COUNT V**
19 **(Conspiracy to Commit Fraud – Against All Defendants)**

20 125. Answering Defendants repeat and incorporate their responses
21 to the allegations set forth in Paragraphs 1 through 124 above as if fully
22 set forth herein.

23 126. Denied. The allegations in this paragraph constitute legal
24 conclusions to which no response is required and all allegations contained
25 therein are deemed denied. To the extent, if any, Paragraph 126 is
26 deemed to contain allegations of fact, Answering Defendants deny all such
27 factual allegations.
28

1 127. Denied. The allegations in this paragraph constitute legal
2 conclusions to which no response is required and all allegations contained
3 therein are deemed denied. Answering Defendants specifically deny that
4 they engaged in any conspiracy, agreement, or combination to submit
5 fraudulent offers to EBS license holders. The assertion that Defendants
6 acted solely for “personal financial gain” distorts the reality of competitive
7 market participation and ignores T-Mobile’s own strategic interests in
8 these transactions. By way of further response, Answering Defendants
9 incorporate their response to the allegations set forth in Paragraph
10 1 above.

11 128. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied. To the extent, if any, Paragraph 128 is
14 deemed to contain allegations of fact, Answering Defendants deny all such
15 factual allegations. Answering Defendants incorporate their responses to
16 the allegations set forth in Paragraphs 1, 4 and 127 above.

17 129. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 129 is
20 deemed to contain allegations of fact, Answering Defendants deny all such
21 factual allegations. Answering Defendants incorporate their responses to
22 the allegations set forth in Paragraphs 1, 4 and 127 above.

23 130. Denied. The allegations in this paragraph constitute legal
24 conclusions to which no response is required and all allegations contained
25 therein are deemed denied. To the extent, if any, Paragraph 130 is
26 deemed to contain allegations of fact, Answering Defendants deny all such
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28

1 factual allegations.

2 **COUNT VI**
3 **(Cal. Penal Code § 496(c) – Against All Defendants)**

4 131. Answering Defendants repeat and incorporate their responses
5 to the allegations set forth in Paragraphs 1 through 130 above as if fully
6 set forth herein.

7 132. Denied. The allegations in this paragraph constitute legal
8 conclusions to which no response is required and all allegations contained
9 therein are deemed denied.

10 133. Denied. The allegations in this paragraph constitute legal
11 conclusions to which no response is required and all allegations contained
12 therein are deemed denied.

13 134. Denied. The allegations in this paragraph constitute legal
14 conclusions to which no response is required and all allegations contained
15 therein are deemed denied. To the extent, if any, Paragraph 134 is
16 deemed to contain allegations of fact, Answering Defendants deny all such
17 factual allegations. Answering Defendants incorporate their response to
18 the allegations set forth in Paragraph 1 above.

19 135. Denied. The allegations in this paragraph constitute legal
20 conclusions to which no response is required and all allegations contained
21 therein are deemed denied. To the extent, if any, Paragraph 135 is
22 deemed to contain allegations of fact, Answering Defendants deny all such
23 factual allegations. Answering Defendants incorporate their response to
24 the allegations set forth in Paragraph 1 above.

25 136. Denied. The allegations in this paragraph constitute legal
26 conclusions to which no response is required and all allegations contained
27
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1 therein are deemed denied. To the extent, if any, Paragraph 136 is
2 deemed to contain allegations of fact, Answering Defendants deny all such
3 factual allegations. Answering Defendants incorporate their response to
4 the allegations set forth in Paragraph 1 above.

5 137. Denied. The allegations in this paragraph constitute legal
6 conclusions to which no response is required and all allegations contained
7 therein are deemed denied. To the extent, if any, Paragraph 137 is
8 deemed to contain allegations of fact, Answering Defendants deny all such
9 factual allegations. Answering Defendants incorporate their response to
10 the allegations set forth in Paragraph 1 above.

11 138. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied. To the extent, if any, Paragraph 138 is
14 deemed to contain allegations of fact, Answering Defendants deny all such
15 factual allegations. Answering Defendants incorporate their response to
16 the allegations set forth in Paragraph 1 above.

17 139. Denied. The allegations in this paragraph constitute legal
18 conclusions to which no response is required and all allegations contained
19 therein are deemed denied. To the extent, if any, Paragraph 139 is
20 deemed to contain allegations of fact, Answering Defendants deny all such
21 factual allegations. Answering Defendants incorporate their responses to
22 the allegations set forth in Paragraphs 1, 7 and 66 above. Furthermore,
23 the non-disclosure agreements are written documents that must be
24 referred to for their content and that speak for themselves.

25 140. Denied. The allegations in this paragraph constitute legal
26 conclusions to which no response is required and all allegations contained
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1 therein are deemed denied. To the extent, if any, Paragraph 140 is
2 deemed to contain allegations of fact, Answering Defendants deny all such
3 factual allegations. Answering Defendants incorporate their response to
4 the allegations set forth in Paragraph 1 above.

5 141. Denied. The allegations in this paragraph constitute legal
6 conclusions to which no response is required and all allegations contained
7 therein are deemed denied. To the extent, if any, Paragraph 141 is
8 deemed to contain allegations of fact, Answering Defendants deny all such
9 factual allegations.

10 142. Denied. The allegations in this paragraph constitute legal
11 conclusions to which no response is required and all allegations contained
12 therein are deemed denied. To the extent, if any, Paragraph 142 is
13 deemed to contain allegations of fact, Answering Defendants deny all such
14 factual allegations.

15
16 **COUNT VII**
17 **(Conversion – Against All Defendants)**

18 143. Answering Defendants repeat and incorporate their responses
19 to the allegations set forth in Paragraphs 1 through 142 above as if fully
20 set forth herein.

21 144. Denied. The allegations in this paragraph constitute legal
22 conclusions to which no response is required and all allegations contained
23 therein are deemed denied. T-Mobile exercised its ROFR voluntarily and,
24 in doing so, chose to spend money to acquire EBS licenses. Answering
25 Defendants had no control over T-Mobile's decision-making, nor did they
26 interfere with any alleged "right to possess" funds that T-Mobile elected
27 to use in its business dealings. Further, Answering Defendants dispute
28

1 that the prices T-Mobile paid to exercise its ROFR were “improperly
2 inflated.” The offers made to EBS license holders reflected fair market
3 value for such licenses. T-Mobile, a sophisticated entity with vast
4 resources, independently determined that the prices it paid were
5 acceptable. Its attempt to recast ordinary market competition as wrongful
6 conduct is nothing more than an effort to shield itself from the
7 consequences of its own business decisions. Answering Defendants
8 incorporate their response to the allegations set forth in Paragraph
9 1 above.

10
11 145. Denied. The allegations in this paragraph constitute legal
12 conclusions to which no response is required and all allegations contained
13 therein are deemed denied. Answering Defendants incorporate their
14 responses to the allegations set forth in Paragraphs 1 and 144 above.

15
16 146. Denied. The allegations in this paragraph constitute legal
17 conclusions to which no response is required and all allegations contained
18 therein are deemed denied. To the extent, if any, Paragraph 146 is
19 deemed to contain allegations of fact, Answering Defendants deny all such
20 factual allegations. Answering Defendants incorporate their responses to
21 the allegations set forth in Paragraphs 1 and 144 above.

22
23 147. Denied. The allegations in this paragraph constitute legal
24 conclusions to which no response is required and all allegations contained
25 therein are deemed denied. To the extent, if any, Paragraph 147 is
26 deemed to contain allegations of fact, Answering Defendants deny all such
27 factual allegations. Answering Defendants incorporate their responses to
28 the allegations set forth in Paragraphs 1 and 144 above.

148. Denied. The allegations in this paragraph constitute legal

1 conclusions to which no response is required and all allegations contained
2 therein are deemed denied. To the extent, if any, Paragraph 148 is
3 deemed to contain allegations of fact, Answering Defendants deny all such
4 factual allegations. Answering Defendants incorporate their responses to
5 the allegations set forth in Paragraphs 1 and 144 above.

6 149. Denied. The allegations in this paragraph constitute legal
7 conclusions to which no response is required and all allegations contained
8 therein are deemed denied. To the extent, if any, Paragraph 149 is
9 deemed to contain allegations of fact, Answering Defendants deny all such
10 factual allegations.

11
12 **COUNT VIII**
13 **(Violation of California Unfair Competition Law, Cal. Bus. &**
14 **Prof. Code § 17200 – Against All Defendants)**

15 150. Answering Defendants repeat and incorporate their responses
16 to the allegations set forth in Paragraphs 1 through 149 above as if fully
17 set forth herein.

18 151. Denied. The allegations in this paragraph constitute legal
19 conclusions to which no response is required and all allegations contained
20 therein are deemed denied.

21 152. Denied. The allegations in this paragraph constitute legal
22 conclusions to which no response is required and all allegations contained
23 therein are deemed denied.

24 153. Denied. The allegations in this paragraph constitute legal
25 conclusions to which no response is required and all allegations contained
26 therein are deemed denied. To the extent, if any, Paragraph 153 is
27 deemed to contain allegations of fact, Answering Defendants deny all such
28 factual allegations.

1 154. Denied. The allegations in this paragraph constitute legal
2 conclusions to which no response is required and all allegations contained
3 therein are deemed denied. To the extent, if any, Paragraph 103 is
4 deemed to contain allegations of fact, Answering Defendants deny all such
5 factual allegations.

6 155. Denied. The allegations in this paragraph constitute legal
7 conclusions to which no response is required and all allegations contained
8 therein are deemed denied. Answering Defendants incorporate their
9 response to the allegations set forth in Paragraph 1 above.

10 156. Denied. The allegations in this paragraph constitute legal
11 conclusions to which no response is required and all allegations contained
12 therein are deemed denied. Furthermore, Answering Defendants deny
13 that their business acts and practices were “unfair.”

14 a. Answering Defendants engaged in lawful, good-faith competition.
15 The assertion that Defendants’ offers were “shams” is baseless.
16 The fact that T-Mobile may have been forced to pay market-
17 driven prices for EBS licenses does not make Defendants’ conduct
18 unlawful—it simply reflects the reality of fair market
19 competition. Furthermore, the offers were non-binding subject to
20 due diligence, which was necessary due to T-Mobile concealing
21 essential economic information.

22 b. Answering Defendants deny that their conduct caused any harm
23 to T-Mobile, let alone harm that outweighs the legitimate utility
24 of fair market negotiations. If T-Mobile suffered any financial
25 impact, it was due to its own decision to exercise its ROFR in a
26 competitive environment, not because of any wrongful conduct by
27
28

1 Answering Defendants.

2 157. Denied. The allegations in this paragraph constitute legal
3 conclusions to which no response is required and all allegations contained
4 therein are deemed denied. Furthermore, Answering Defendants deny
5 that T-Mobile has suffered any “ascertainable loss” due to their actions.
6 Answering Defendants did not “siphon off” any amounts from T-Mobile,
7 nor did they engage in any so-called “kickback” scheme. Any claim that
8 T-Mobile overpaid for EBS licenses is a direct consequence of competitive
9 bidding, not any unlawful conduct by Answering Defendants. Answering
10 Defendants incorporate their response to the allegations set forth in
11 Paragraph 1 above.
12

13 158. Denied. The allegations in this paragraph constitute legal
14 conclusions to which no response is required and all allegations contained
15 therein are deemed denied. To the extent, if any, Paragraph 158 is
16 deemed to contain allegations of fact, Answering Defendants deny all such
17 factual allegations. Answering Defendants incorporate their responses to
18 the allegations set forth in Paragraphs 1 and 155 above.

19 159. Denied. The allegations in this paragraph constitute legal
20 conclusions to which no response is required and all allegations contained
21 therein are deemed denied. To the extent, if any, Paragraph 159 is
22 deemed to contain allegations of fact, Answering Defendants deny all such
23 factual allegations. Answering Defendants incorporate their responses to
24 the allegations set forth in Paragraphs 1 and 155 above.

25 160. Denied. The allegations in this paragraph constitute legal
26 conclusions to which no response is required and all allegations contained
27 therein are deemed denied. To the extent, if any, Paragraph 160 is
28

1 deemed to contain allegations of fact, Answering Defendants deny all such
2 factual allegations.

3
4 **COUNT IX**
5 **(Tortious Interference with Business Expectancy and**
6 **Contractual Relationship – Against All Defendants)**

7 161. Answering Defendants repeat and incorporate their responses
8 to the allegations set forth in Paragraphs 1 through 160 above as if fully
9 set forth herein.

10 162. Denied. T-Mobile's lease agreements with EBS license holders
11 are written documents that must be referred to for their content and that
12 speak for themselves. Moreover, Answering Defendants deny the
13 accuracy and completeness of T-Mobile's attempt to paraphrase the
14 content of the lease agreements. To the extent this Paragraph contains a
15 legal conclusion, no response is required and all allegations contained
16 therein are deemed denied.

17 163. Admitted only that Answering Defendants knew that T-
18 Mobile's lease agreements with EBS license holders cover most of EBS
19 licenses. It is specifically denied that Answering Defendants knew the
20 specific terms of every lease agreement between T-Mobile and the EBS
21 license holder.

22 164. Denied. The allegations in this paragraph constitute legal
23 conclusions to which no response is required and all allegations contained
24 therein are deemed denied. Answering Defendants incorporate their
25 response to the allegations set forth in Paragraph 1 above.

26 165. Denied. The allegations in this paragraph constitute legal
27 conclusions to which no response is required and all allegations contained
28 therein are deemed denied. Furthermore, Answering Defendants

1 categorically deny that they disrupted T-Mobile's contracts with EBS
2 license holders or "artificially inflated" offers. Answering Defendants
3 further deny the existence of any "10% kickback scheme." The terms of
4 WCO's agreements with EBS license holders were lawful, transparent,
5 and designed to ensure fair market transactions. If T-Mobile paid more to
6 exercise its ROFR, it did so because of legitimate competitive bidding—
7 something T-Mobile seeks to eliminate through its anticompetitive
8 conduct and litigation rather than fair competition. Answering
9 Defendants incorporate their responses to the allegations set forth in
10 Paragraphs 1 and 7 above.

11
12 166. Denied. The allegations in this paragraph constitute legal
13 conclusions to which no response is required and all allegations contained
14 therein are deemed denied. Answering Defendants deny that they caused
15 any disruption to T-Mobile's lease arrangements. T-Mobile's own decision
16 to exercise its ROFR rather than allow EBS license holders to accept
17 WCO's offer is the sole reason any lease agreements ended. Answering
18 Defendants engaged in lawful, competitive market transactions, while T-
19 Mobile's claims reflect an attempt to stifle competition and suppress fair
20 market value for EBS licenses. Answering Defendants incorporate their
21 response to the allegations set forth in Paragraph 1 above.

22
23 167. Denied. The allegations in this paragraph constitute legal
24 conclusions to which no response is required and all allegations contained
25 therein are deemed denied. To the extent, if any, Paragraph 167 is
26 deemed to contain allegations of fact, Answering Defendants deny all such
27 factual allegations.

28 168. Denied. The allegations in this paragraph constitute legal

1 conclusions to which no response is required and all allegations contained
2 therein are deemed denied. To the extent, if any, Paragraph 168 is
3 deemed to contain allegations of fact, Answering Defendants deny all such
4 factual allegations.

5 169. Denied. The allegations in this paragraph constitute legal
6 conclusions to which no response is required and all allegations contained
7 therein are deemed denied. To the extent, if any, Paragraph 169 is
8 deemed to contain allegations of fact, Answering Defendants deny all such
9 factual allegations.

10
11 **COUNT X**
12 **(Unjust Enrichment – Against All Defendants)**

13 170. Answering Defendants repeat and incorporate their responses
14 to the allegations set forth in Paragraphs 1 through 169 above as if fully
15 set forth herein.

16 171. Denied. The allegations in this paragraph constitute legal
17 conclusions to which no response is required and all allegations contained
18 therein are deemed denied. Furthermore, T-Mobile's lease agreements
19 with EBS license holders are written documents that must be referred to
20 for their content and that speak for themselves. Answering Defendants
21 incorporate their response to the allegations set forth in Paragraph
22 1 above.

23 172. Denied. WCO Spectrum received payments from EBS license
24 holders under the Commitment Cost Agreements **only** when T-Mobile
25 exercised its ROFR. Answering Defendants categorically deny the claim
26 that these payments were "material." These payments merely served to
27 mitigate the risk that, after WCO Spectrum invested substantial time and
28

1 resources into securing a deal, another entity could exploit its efforts and
2 outbid it at the last moment. Furthermore, the Commitment Cost
3 Agreements are written documents that must be referred to for their
4 content and that speak for themselves. Answering Defendants
5 incorporate their responses to the allegations set forth in Paragraphs 1
6 and 7 above.

7 173. Denied. The allegations in this paragraph constitute legal
8 conclusions to which no response is required and all allegations contained
9 therein are deemed denied. To the extent, if any, Paragraph 173 is
10 deemed to contain allegations of fact, Answering Defendants deny all such
11 factual allegations. Answering Defendants incorporate their responses to
12 the allegations set forth in Paragraphs 1 and 172 above.

13 174. Denied. The allegations in this paragraph constitute legal
14 conclusions to which no response is required and all allegations contained
15 therein are deemed denied. To the extent, if any, Paragraph 174 is
16 deemed to contain allegations of fact, Answering Defendants deny all such
17 factual allegations.

18 175. Denied. The allegations in this paragraph constitute legal
19 conclusions to which no response is required and all allegations contained
20 therein are deemed denied. To the extent, if any, Paragraph 175 is
21 deemed to contain allegations of fact, Answering Defendants deny all such
22 factual allegations.

23
24 **COUNT XI**
25 **(Negligent Misrepresentation – Against All Defendants)**

26 176. Answering Defendants repeat and incorporate their responses
27 to the allegations set forth in Paragraphs 1 through 175 above as if fully
28

1 set forth herein.

2 177. Denied. The allegations in this paragraph constitute legal
3 conclusions to which no response is required and all allegations contained
4 therein are deemed denied. Furthermore, T-Mobile's lease agreements
5 with EBS license holders are written documents that must be referred to
6 for their content and that speak for themselves. Answering Defendants
7 incorporate their response to the allegations set forth in Paragraph
8 1 above.

9 178. Denied. The allegations in this paragraph constitute legal
10 conclusions to which no response is required and all allegations contained
11 therein are deemed denied. To the extent, if any, Paragraph 178 is
12 deemed to contain allegations of fact, Answering Defendants deny all such
13 factual allegations. Answering Defendants incorporate their response to
14 the allegations set forth in Paragraph 1 above.

15 179. Denied. The allegations in this paragraph constitute legal
16 conclusions to which no response is required and all allegations contained
17 therein are deemed denied. To the extent, if any, Paragraph 179 is
18 deemed to contain allegations of fact, Answering Defendants deny all such
19 factual allegations. Answering Defendants incorporate their response to
20 the allegations set forth in Paragraph 1 above.

21 180. Denied. The allegations in this paragraph constitute legal
22 conclusions to which no response is required and all allegations contained
23 therein are deemed denied. To the extent, if any, Paragraph 180 is
24 deemed to contain allegations of fact, Answering Defendants deny all such
25 factual allegations. Answering Defendants incorporate their response to
26 the allegations set forth in Paragraph 1 above.
27
28

1 181. Denied. The allegations in this paragraph constitute legal
2 conclusions to which no response is required and all allegations contained
3 therein are deemed denied. To the extent, if any, Paragraph 181 is
4 deemed to contain allegations of fact, Answering Defendants deny all such
5 factual allegations. Answering Defendants incorporate their response to
6 the allegations set forth in Paragraph 1 above.

7 182. Denied. The allegations in this paragraph constitute legal
8 conclusions to which no response is required and all allegations contained
9 therein are deemed denied. To the extent, if any, Paragraph 182 is
10 deemed to contain allegations of fact, Answering Defendants deny all such
11 factual allegations. Answering Defendants incorporate their response to
12 the allegations set forth in Paragraph 1 above.

13 **REQUEST FOR RELIEF**

14 Answering Defendants deny the allegations in T-Mobile's Prayer for
15 Relief and further deny that T-Mobile is entitled to any of the relief
16 requested therein.

17 **AFFIRMATIVE DEFENSES**

18 1. Answering Defendants repeat, replead and incorporate by
19 reference each of their responses to the previous paragraphs as if they
20 had been fully set forth herein.

21 2. Plaintiffs' Complaint fails to state a claim upon which relief
22 can be granted.

23 3. Some or all claims are barred by the applicable statute(s) of
24 limitations.

25 4. Plaintiffs' claims are barred, in whole or in part, by the
26 doctrine of waiver.
27
28

1 5. Plaintiffs are estopped from asserting their claims by their
2 own conduct, representations, or omissions.

3 6. Plaintiffs' claims are barred under the doctrine of unclean
4 hands due to their own anticompetitive and bad-faith conduct.

5 7. To the extent Plaintiffs exercised their Right of First Refusal
6 under contractual agreements, they did so voluntarily and with full
7 knowledge, thereby consenting to the conduct they now challenge.

8 8. Plaintiffs did not reasonably or actually rely on any alleged
9 misrepresentation or omission by Answering Defendants.

10 9. No act or omission by Answering Defendants was the
11 proximate or actual cause of any injury to Plaintiffs.

12 10. Any alleged harm suffered by Plaintiffs was caused by
13 independent, intervening, or superseding actions of third parties or by
14 Plaintiffs' own conduct.

15 11. Plaintiffs failed to take reasonable steps to mitigate any
16 alleged damages.

17 12. Any alleged conduct by Answering Defendants was justified by
18 legitimate business purposes and competitive market behavior.

19 13. All actions taken by Answering Defendants were lawful, made
20 in good faith, and consistent with recognized business practices and
21 applicable regulations.

22 14. Plaintiffs' alleged damages are speculative, uncertain, and not
23 recoverable under the law.

24 15. To the extent Plaintiffs seek punitive or exemplary damages,
25 such relief is barred under applicable law and/or due process principles.
26
27
28

1 16. Plaintiffs' claims are barred for failure to join necessary and
2 indispensable parties.

3 17. Plaintiffs' claims are part of an illegal anticompetitive
4 campaign and are unenforceable as a matter of law.

5 18. Plaintiffs unreasonably delayed in asserting their claims, and
6 such delay has prejudiced Answering Defendants.

7 19. To the extent Plaintiffs are entitled to any relief (which is
8 denied), such recovery must be offset or reduced by Plaintiffs' own conduct
9 and/or benefits received.

10 20. Defendants Kratz, Academia, and Bitzarakis were not agents,
11 officers, directors, or principals of WCO Spectrum and exercised no
12 control over its financing arrangements or internal governance. They
13 cannot be held liable for the alleged conduct of WCO or other parties
14 under agency, respondeat superior, or any theory of control.

15 21. Defendants Kratz, Academia, and Bitzarakis lacked the
16 requisite knowledge and intent to support any claim based on fraud,
17 conspiracy, or racketeering. They did not knowingly participate in or
18 further any alleged fraudulent scheme and cannot be held liable under
19 theories requiring scienter or willful misconduct.

20 22. Plaintiffs' claims impermissibly lump Defendants Kratz,
21 Academia, and Bitzarakis together with other unrelated parties and fail
22 to allege specific facts as to each Defendant's conduct. As such, the claims
23 are barred by the doctrines of improper group pleading and failure to
24 plead fraud with particularity under Fed. R. Civ. P. 9(b).
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1 23. Answering Defendants reserve the right to assert additional
2 affirmative defenses that may become available or apparent through
3 discovery or further proceedings.
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ANTITRUST COUNTERCLAIMS

Counterclaim-Plaintiff WCO Spectrum alleges as follows with personal knowledge as to itself and on information and belief as to all other matters.

NATURE OF THE ACTION

T-Mobile is a monopsonist in the market for 2.5 GHz spectrum, a unique and valuable mid-band wireless spectrum. A monopsony is the mirror image of a monopoly on the buying side. T-Mobile controls about 90% of this spectrum through a combination of direct ownership of licenses and restrictive lease agreements with license holders.

These antitrust counterclaims expose how, after WCO Spectrum rejected T-Mobile’s illegal bid-rigging proposal—presented quite literally in a smoke-filled room—T-Mobile embarked on a campaign of exclusionary tactics to crush competition and block WCO Spectrum from competing for these spectrum licenses, thereby protecting and maintaining its monopsony power.

T-Mobile has maintained and extended its monopsony power primarily by engaging in three anticompetitive acts:

- Restrictive lease terms designed to foil competitive bids;
- Defensively buying up licenses that could have gone to a competitive bidder; and
- Engaging in lawfare designed to intimidate and discourage the sellers of the licenses.

T-Mobile's strategy has driven up costs for WCO Spectrum, prevented its entry into the below-defined relevant markets, discouraged

1 sellers (non-profit schools, colleges and universities) from negotiating
2 competitive deals, and suppressed prices below competitive levels for this
3 unique and valuable spectrum—all in violation of federal antitrust laws.
4 We describe the details of T-Mobile’s anticompetitive scheme below.

5 **JURISDICTION AND VENUE**

6
7 1. Counterclaim-Plaintiff asserts antitrust violations under
8 Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2 and seeks monetary
9 and equitable relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C.
10 §§ 15, 26.

11 2. Counterclaim-Plaintiff asserts California state law violations
12 under the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 et seq., and
13 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et
14 seq., as well as Intentional Interference with Prospective Economic
15 Advantage.

16 3. This Court has primary subject-matter jurisdiction over this
17 action under 28 U.S.C. § 1331, 1337, and supplemental jurisdiction over
18 the state claims under 28 U.S.C. § 1367.

19 4. Venue is proper in the Central District of California under 15
20 U.S.C. §§ 15, 22 because Counterclaim-Defendants can be found in this
21 district. Venue is also proper under 28 U.S.C. 1391 because a substantial
22 part of the events giving rise to this complaint occurred in this district.

23 5. Counterclaim-Defendants have submitted to the personal
24 jurisdiction of this Court as to the same activities giving rise to the
25 counterclaims.
26
27
28

THE PARTIES

6. Counterclaim-Plaintiff WCO Spectrum is a limited liability company organized and existing under the laws of the state of Delaware and doing business in the state of California with its principal office located at 9903 Wilshire Boulevard, Beverly Hills, California 90212.

7. Counterclaim-Defendant T-Mobile US, Inc. (“T-Mobile”) is a Delaware corporation with a principal office at 12920 SE 38th Street, Bellevue, Washington, 98006.

8. Counterclaim-Defendant Clearwire Spectrum Holdings LLC (“Clearwire”) is a limited liability company organized under the laws of Delaware, with a principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile.

9. Counterclaim-Defendant Clearwire Spectrum Holdings II LLC (“Clearwire II”) is a limited liability company organized under the laws of Delaware, with a principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile.

10. Counterclaim-Defendant Clearwire Spectrum Holdings III LLC (“Clearwire III”) is a limited liability company organized under the laws of Delaware, with a principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile.

11. Counterclaim-Defendant Fixed Wireless Holdings LLC (“Fixed Wireless”) is a limited liability company organized under the laws of Delaware, with a principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate parent is T-Mobile.

12. Counterclaim-Defendant NSAC LLC (“NSAC”) is a limited liability company organized under the laws of Delaware, with a principal

1 office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its ultimate
2 parent is T-Mobile.

3 13. Counterclaim-Defendant TDI Acquisition Sub LLC (“TDI”) is
4 a limited liability company organized under the laws of Delaware, with a
5 principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its
6 ultimate parent is T-Mobile.

7 14. Counterclaim-Defendant WBSY Licensing LLC (“WBSY”) is a
8 limited liability company organized under the laws of Delaware, with a
9 principal office at 12920 SE 38th Street, Bellevue, Washington, 98006. Its
10 ultimate parent is T-Mobile.

11 15. Counterclaim-Defendants Clearwire, Clearwire II, Clearwire
12 III, Fixed Wireless, NSAC, TDI, and WBSY are T-Mobile subsidiaries that
13 lease EBS spectrum from educational institutions. *See* Complaint ¶ 18.
14 Counterclaim-Defendants’ leases are a primary subject of
15 these Counterclaims.
16

17 16. Counterclaim-Defendants are hereinafter referred to
18 collectively as “T-Mobile.”

19 BACKGROUND

20 Wireless Spectrum and WCO Spectrum

21 17. The FCC issues licenses to operate on wireless spectrum. Each
22 FCC license grants an entity permission to operate on a specific frequency
23 or frequencies within a particular radio band in a specific geographic area.
24 The “2.5 GHz band” extends from 2496 MHz to 2690 MHz, and comprises
25 frequencies assigned by the FCC through “Educational Broadband
26 Service” (EBS) and “Broadband Radio Service” (BRS) licenses. In the 2.5
27 GHz band, there are 20 EBS frequency channels and 13 BRS frequency
28

1 channels, in addition to a number of small “guard-band,” or buffer,
2 channels associated with certain of the EBS and BRS channels.

3 18. EBS and BRS spectrum are functionally interchangeable, the
4 only difference being that while BRS spectrum has always been available
5 for commercial use, EBS spectrum licenses originally were only allowed
6 to be held by educational institutions. FCC rules subsequently permitted
7 educational institutions to lease their EBS spectrum rights to commercial
8 users, and most of them did so to obtain much-needed funding for their
9 schools. Then, in 2020, the FCC again changed its EBS rules, this time to
10 allow EBS license holders to sell their license rights to commercial
11 entities.¹ Through a combination of its ownership of BRS and EBS
12 licenses and its long-term leases from EBS license holders, T-Mobile
13 presently controls about 90% of EBS and BRS spectrum usage rights
14 (referred to collectively as “2.5 GHz spectrum” or “EBS/BRS spectrum”).
15

16 19. WCO Spectrum was formed in 2020 in response to the FCC
17 rule change allowing private commercial entities to acquire EBS licenses.
18 WCO Spectrum conceived an innovative business model to ultimately
19 lower costs and increase efficiency of the limited 2.5 GHz spectrum. By
20 purchasing significant amounts of EBS spectrum as a third-party
21 investor, WCO Spectrum would implement a model similar to that
22 employed by the wireless communications carriers themselves to sell
23 tower assets to third parties and lease them back on shared basis, thus
24 bringing down the overall cost of capital to operate a network.
25

26
27 1. Technically, this entails an assignment of the license, as the FCC actually owns
28 the license itself. They are nevertheless commonly referred to as “sales” in the
industry.

1 20. By selling tower assets to neutral third parties, fewer towers
2 were needed, which not only lowered costs, but also created efficiencies
3 and improved coverage. The end result was superior network quality at a
4 lower cost. Similar technologies that allow dynamic sharing of wireless
5 spectrum, such as Citizens Broadband Radio Service (CBRS),² have
6 already been deployed. When spectrum sharing is ultimately deployed in
7 the 2.5 GHz band as planned, the result will be more efficient utilization
8 of spectrum, benefits to consumers in network quality and reductions in
9 the cost of delivering wireless services. This is the business WCO
10 Spectrum intends to drive.

11 21. Such dynamic spectrum sharing will enhance network
12 efficiency in the 2.5 GHz band by optimizing spectrum use, reducing
13 congestion, and enabling flexible spectrum deployments. As with CBRS,
14 this will happen by at least the following means under WCO Spectrum's
15 plan:
16

- 17 a. *Dynamic spectrum sharing.* Unlike traditional spectrum
18 allocation, where frequencies are statically assigned,
19 WCO Spectrum's plan will use an SAS to allocate
20 spectrum dynamically based on demand and availability.
21 This will ensure the 194 MHz of bandwidth in the 2.5
22

23
24 2. Introduced in 2015, CBRS operates in the 3.55 GHz band (specifically 3550–
25 3700 MHz), which was previously reserved primarily for Department of Defense radar
26 systems and some commercial satellite operations. CBRS allows a mix of federal,
27 licensed, and unlicensed users to access this spectrum dynamically, making it a
28 groundbreaking approach to spectrum management. CBRS uses a tiered access model
for different categories of users that is managed by a Spectrum Access System (SAS).
The SAS, an automated system, coordinates spectrum use in real time, ensuring no
interference occurs between tiers while maximizing availability.

1 GHz band is used efficiently, minimizing wasted
2 capacity;

- 3 b. *Boosting 5G and all subsequent wireless generations.* 2.5
4 GHz spectrum aligns much better with 5G's spectrum
5 needs than do other spectrum bands (see *infra*). The
6 sharing model contemplated by WCO Spectrum will
7 lower the cost of spectrum access, accelerating 5G
8 deployment and making high-efficiency networks more
9 widespread; and
10
11 c. *Interference mitigation.* The SAS will actively monitor
12 and adjust spectrum use to prevent interference among
13 users, ensuring all 2.5 GHz band users will operate
14 efficiently.

15 WCO Spectrum's plan is to implement a spectrum sharing concept similar
16 to the one already in use in CBRS, and to use spectrum sharing to lease
17 its acquired EBS licenses to T-Mobile, AT&T, Verizon, or others when the
18 leases covering those licenses expire. This plan will expand network
19 efficiency by making spectrum use more flexible, reducing costs,
20 alleviating congestion, and supporting innovative applications.

21 22. Third-party ownership of spectrum by WCO Spectrum (and
22 potentially others) also allows sophisticated financing arrangements new
23 to the spectrum class that will serve to facilitate a transition to spectrum-
24 sharing in the 2.5 GHz band, resulting in lower operating costs for
25 wireless carriers that will benefit consumers.

26 23. Although the benefits from dynamic spectrum sharing are
27 clear, the wireless carriers have an historical bias for holding total control
28

1 of their spectrum assets. Of course, the wireless carriers also historically
2 owned their tower assets as well, but their ballooning balance sheets
3 demanded that they dispose of them to third parties, thereby creating a
4 separate tower industry. The operating efficiency benefits to the wireless
5 carriers and ultimately consumers of moving to the tower industry model
6 are plain, but the carriers have not yet adapted to the dispossession of
7 spectrum assets as they did with towers. Similar to the tower industry,
8 third party ownership by companies like WCO Spectrum will expedite the
9 coordination and cooperation necessary for efficient use of spectrum.

10
11 24. Gary Winnick, the late founder of WCO Spectrum, conceived
12 this plan for efficient spectrum sharing, together with the other principals
13 of WCO Spectrum, in the same way that he had revolutionized other
14 industries. In contrast with T-Mobile's absurd calumnies targeted at Mr.
15 Winnick, he has introduced business plans that that have infused
16 competition into other telecommunications markets. For example, in 1997
17 he founded Global Crossing, a pioneering telecommunications company
18 that significantly reshaped the data transport industry by building one of
19 the first global fiber-optic networks. This ambitious infrastructure
20 project, which included undersea cables connecting continents over a
21 million fiber miles, introduced a new level of competition to a market
22 previously dominated by a handful of incumbent carriers. Global Crossing
23 opened the market to greater competition, driving down costs by breaking
24 the incumbent oligopoly and dramatically increasing the available
25 bandwidth for data transport for transatlantic and transpacific routes.
26 Ultimately, the heightened competition introduced by Global Crossing led
27 to lower prices for internet access, international calling, and business
28

1 data services. Global Crossing's competitive entry into the global data
2 transport market thus drastically shifted the paradigm of data transport
3 in a manner analogous to the benefits to be reaped from the innovative,
4 dynamic spectrum sharing planned by WCO Spectrum.

5 25. After developing its current 2.5 GHz business plan, WCO
6 Spectrum sought and obtained significant commitments and financial
7 backing. It then began a broad initiative to negotiate the purchase of
8 rights from educational license holders. WCO Spectrum's entrance into
9 the markets immediately introduced competition to the market and
10 changed the status quo. And T-Mobile noticed.

11 **T-Mobile's Invitation to Collude**

12
13 26. When T-Mobile first began opposing WCO Spectrum's efforts
14 to bid for EBS licenses, WCO Spectrum sought a meeting with T-Mobile
15 to allay any concerns T-Mobile might have regarding WCO Spectrum's
16 intent to honor the terms of any leases that were held by T-Mobile—what
17 WCO Spectrum naively thought was the cause of T-Mobile's objection to
18 its entry into the marketplace. In or around March 2021, Carl Katerndahl
19 of WCO Spectrum met with Paul McCarthy, Sr. Director Spectrum
20 Portfolio Management and Strategy at T-Mobile, in Chicago. The meeting
21 started at The Clayton, a cigar lounge, at 212 N. Canal Street, and then
22 continued nearby at Gibsons Italia, a restaurant at 233 N. Canal Street.

23 27. It was at this meeting that T-Mobile invited WCO Spectrum
24 to engage in a criminal antitrust conspiracy. More specifically, Mr.
25 McCarthy advised Mr. Katerndahl that WCO Spectrum's bid prices for
26 licenses **were too high**. Mr. McCarthy stated that, for T-Mobile and WCO
27 Spectrum to "work together," WCO Spectrum would have to agree to
28

1 adjust its pricing downward to a level acceptable to T-Mobile. Mr.
2 McCarthy asked Mr. Katerndahl to come back with ideas for “concessions”
3 in any future leases, so that T-Mobile could consider “letting WCO buy
4 the licenses.” Mr. McCarthy further explained that T-Mobile considered
5 EBS license holders to be “captives.”

6 28. Mr. Katerndahl rejected Mr. McCarthy’s invitation-to-collude
7 on purchase prices for the wireless spectrum. Indeed, he refused to
8 discuss pricing at all with Mr. McCarthy. In response, T-Mobile mounted
9 a campaign to raise substantially the costs to both WCO Spectrum and
10 EBS license holders of transacting with each other, and indeed to exclude
11 WCO Spectrum from the market altogether. T-Mobile’s efforts are
12 described below.

13 **RELEVANT MARKET**

14 **Product Market Definition**

15 29. The relevant product market for assessing WCO Spectrum’s
16 claims against T-Mobile is the market for EBS/BRS spectrum rights.
17 (Because the 2.5 GHz band is composed entirely of EBS and BRS
18 spectrum—with certain small amounts of buffer spectrum attributable to
19 either—the relevant product market can also be expressed as the market
20 for 2.5 GHz spectrum rights.) 2.5 GHz spectrum rights include the right
21 to operate wireless spectrum on the frequencies authorized by the FCC
22 license. The market for 2.5 GHz spectrum rights includes both the
23 sale/purchase and lease of EBS or BRS spectrum licenses issued by
24 the FCC.

25 30. 2.5 GHz spectrum lies in the “mid-band” of the wireless
26 spectrum. 2.5 GHz spectrum is not reasonably interchangeable with other
27
28

1 bands of spectrum, including other “mid-band” spectrum, for
2 several reasons:

3 a. *Superior coverage and propagation.* The 2.5 GHz
4 frequency band offers better signal propagation than
5 higher mid-band frequencies like C-band or 3.45 GHz,
6 meaning it travels farther and penetrates obstacles like
7 walls more effectively. This reduces the number of cell
8 sites needed for coverage, making it significantly more
9 cost-efficient. As T-Mobile itself has explained:
10 “[S]pectrum obeys the immutable laws of physics. The
11 higher the frequency, the shorter the distance it can
12 travel and the more easily it is blocked by objects. C-band
13 is 3.7 to 3.98 GHz. T-Mobile’s existing mid-band 5G
14 network uses 2.5 GHz spectrum. Higher banded
15 spectrum cannot travel as far . . . resulting in [2.5 GHz
16 spectrum’s] superior coverage compared to C-Band. . . .
17 Now, Verizon is trying to convince the world it can bend
18 the laws of physics and make C-band work similarly to
19 2.5 GHz.”³ T-Mobile again has stated: “Mid-band 2.5 GHz
20 5G delivers blazing fast speeds that can rival [high-band]
21 millimeter wave, but unlike mmWave, [2.5 GHz] mid-
22 band can blanket large areas with needed coverage and
23 go through walls, windows, and trees. Which means it’s
24

25
26 3. Neville Ray, T-Mobile President of Technology, “Network Blog: The Current
27 State of 5G” (April 19, 2021), [https://www.t-mobile.com/news/network/the-current-
28 state-of-5g](https://www.t-mobile.com/news/network/the-current-state-of-5g).

1 a more practical 5G technology.”⁴ Research has found
2 that 2.5 GHz deployments can cover an area several
3 times greater than 3.45 GHz or C-Band at the same
4 power level and antenna height, highlighting its superior
5 range.

6 b. *High capacity for speed.* The 2.5 GHz band provides
7 significant bandwidth, allowing for high data
8 throughput. This capacity supports faster download
9 speeds and accommodates more users, making it ideal
10 for urban and suburban areas. 2.5 GHz spectrum brings
11 together the best of both worlds: long range for broad
12 coverage with high capacity and speed.

13 c. *Cost effective deployment.* Lower frequency mid-band
14 like 2.5 GHz requires fewer cell sites than higher bands
15 like C-band, reducing infrastructure costs substantially.
16 2.5 GHz spectrum is thus the most efficient spectrum for
17 use in 5G applications. As T-Mobile explains with regard
18 to these other bands: “We estimate C-band will require
19 50% more cell sites for meaningful and continuous
20 coverage, and in some areas, for example in-building, the
21 required densification can be 4x higher than 2.5 GHz.
22 The inescapable fact is that delivering seamless mid-
23

24
25
26 4. T-Mobile Press Release, “T-Mobile Nearly Doubles its Supercharged Mid-Band
27 5G in Just One Month,” (October 28, 2020),
28 <https://www.5gamericas.org/t%E2%80%91mobile-nearly-doubles-its-supercharged-mid%E2%80%91band-5g-in-just-one-month/>.

1 band 5G coverage with C-band alone requires extensive
2 network densification and updates to all 5G sites. That’s
3 both time-consuming and expensive outside of urban
4 areas. So Verizon and AT&T, following their failed
5 business strategies to date, now have a choice: spend
6 more to provide contiguous coverage with C-band, or
7 leave their customers with performance and quality
8 holes in their 5G coverage.”⁵

9
10 d. *Versatility across 5G uses.* In contrast with other
11 spectrum bands, the 2.5 GHz spectrum band supports all
12 three 5G use case categories—enhanced mobile
13 broadband (eMBB), ultra-reliable low-latency
14 communication (URLLC), and massive machine-type
15 communication (mMTC)—due to its blend of speed,
16 capacity, and reach.

17 e. *Regulatory technology rules make other mid-band*
18 *spectrum a poor substitute for 2.5 GHz spectrum.* As T-
19 Mobile has explained: “[T]he maximum allowed output
20 power levels are different and significantly larger for 2.5
21 GHz where it matters the most and where more than
22 83% of the population lives. The chipset and mobile
23 device specifications are the same, but 2.5 GHz rules
24 allow twice as high maximum power than C-band, which
25

26
27 ⁵ Neville Ray, T-Mobile President of Technology, “Network Blog: The Current
28 State of 5G” (April 19, 2021), <https://www.t-mobile.com/news/network/the-current-state-of-5g>.

1 is particularly beneficial in the context of in-home
2 broadband to support improved uplink coverage. The
3 same is true for operating margins and cell edge
4 performance.”⁶

5 31. Thus, T-Mobile itself admits that, due to its unique
6 combination of characteristics, 2.5 GHz spectrum is not reasonably
7 interchangeable with other bands of spectrum, especially for 5G
8 applications. Due to its combination of superior coverage, high capacity,
9 cost efficiency, and versatility, the 2.5 GHz (EBS/BRS) spectrum band
10 constitutes a separate relevant product market, separate even from other
11 spectrum in the “mid-band.”

12 32. A hypothetical monopolist of EBS/BRS spectrum rights
13 profitably could raise price by at least a small but significant, non-
14 transitory amount. Conversely, a hypothetical monopsonist of EBS/BRS
15 spectrum rights profitably could reduce price by at least a small but
16 significant, non-transitory amount.

18 **Geographic Market Definition**

19 33. The relevant geographic markets for assessing WCO
20 Spectrum’s claims against T-Mobile are the geographic service areas
21 (“GSAs”) in which licensees are authorized by the FCC to operate
22 their licenses.

23 34. An EBS or BRS licensee operates within the GSA authorized
24 by the FCC for operation of the license.⁷ A GSA is generally a circular area
25

26 6. *Id.*

27 7. Some BRS licenses operate under GSAs and some under “Basic Trading Area”
28 (BTAs) authorized by the FCC license. In both cases, the FCC specifies the service

1 with a 35-mile radius around an FCC licensee's station coordinates.⁸ In
2 those instances where two co-channel stations have overlapping protected
3 GSAs, the GSA of each license may be reduced by the FCC's "splitting the
4 football" approach to divide the overlap area between the licensees. The
5 FCC also recently auctioned off county-sized "overlay" EBS licenses,
6 which allow the overlay license holders to employ previously unassigned
7 spectrum, and to operate within previously authorized geographic areas,
8 as long as they do not interfere with the signals of incumbent EBS license
9 holders. The GSA for such an overlay license is the county for which the
10 license is issued, subject to the exclusion of overlapping, co-channel
11 incumbent GSAs. T-Mobile purchased the vast majority of EBS overlay
12 licenses in the FCC's recent auction.⁹

14 35. There are typically multiple licenses for different frequency
15 channels issued by the FCC for any given GSA. But a single entity can
16 hold multiple, or even all, of the EBS and BRS licenses for different
17 frequency channels in a GSA.

18 36. Because EBS/BRS spectrum is specific to an FCC-designated
19 local GSA, spectrum rights associated with one GSA are not reasonably
20

21 area in which the holder of the license may operate. "GSA" will be used in these
22 Counterclaims to refer to the FCC-authorized geographic scope of an EBS or BRS
23 license.

24 8. Due to a license modification process that the FCC adopted in 2005, some EBS
25 licenses have smaller, irregular GSAs.

26 9. There are also BRS "overlay" licenses, auctioned off by the FCC in 1996 and
27 2009, which operate in a manner similar to EBS overlay licenses, carving out the
28 license frequencies and geographies previously covered by incumbent licenses. As of
November 2022, T-Mobile owned 853 of 915 BRS overlay licenses. Morningstar,
"Communication Services Observer" (November 2022), at 30.

1 interchangeable with spectrum rights associated with a different GSA.
2 Purchasers of spectrum rights such as T-Mobile, Verizon and AT&T need
3 spectrum in each of these local areas to provide the necessary coverage
4 for their wireless communications networks. Because these carriers are
5 in turn WCO Spectrum's prospective customers through leases of the
6 licenses WCO Spectrum purchases, EBS/BRS spectrum rights for
7 different GSAs are likewise not reasonably interchangeable—either by
8 WCO Spectrum or other prospective purchasers.

9
10 37. The value of EBS/BRS spectrum licenses can vary
11 considerably between different GSAs, as valued in MHz-POPs.¹⁰ The
12 difference in EBS/BRS spectrum rights prices between different GSAs
13 evidences that they are separate relevant geographic markets.

14 38. A hypothetical monopolist of EBS/BRS spectrum rights could
15 profitably raise price by at least a small but significant, non-transitory
16 amount in any authorized GSA. Conversely, a hypothetical monopsonist
17 of EBS/BRS spectrum rights could profitably reduce price by at least a
18 small but significant, non-transitory amount in any authorized GSA.

19 39. The relevant geographic markets in which to evaluate WCO
20 Spectrum's antitrust claims are the GSAs affected by T-Mobile's
21 anticompetitive and exclusionary conduct.¹¹ The relevant markets are
22 thus the markets for EBS/BRS spectrum rights in each such GSA.

23
24 10. "MHz-POPs" with respect to any FCC license is the number of megahertz of
25 wireless spectrum covered by the FCC license multiplied by the population in the
FCC-authorized geographic area for operation of the license.

26 11. Local market areas thus affected include, inter alia: Los Angeles, CA;
27 Sacramento, CA; San Diego, CA; Pasadena, CA; Pittsburgh, PA; Ft. Pierce, FL; Globe,
28 AZ; Memphis, TN; New Orleans, LA; Mobile, AL, Harrisburg, PA; Norfolk, VA;

T-Mobile's Monopsony Power

40. T-Mobile owns or leases about 90% of the FCC licenses to operate EBS/BRS spectrum. In November 2022, T-Mobile owned 87% of the active BRS licenses and controlled about 90% of EBS licenses by purchase or lease.¹² Since then T-Mobile's ownership of EBS/BRS spectrum rights has only increased.

41. T-Mobile possesses monopsony power in every relevant market. In some relevant markets T-Mobile's purchases of EBS/BRS spectrum rights amount to 100%.¹³

42. Entry barriers in the relevant markets are extremely high, including at least:

a. FCC regulation. The FCC regulates the allocation of wireless spectrum by (1) issuing licenses and (2)

Syracuse, NY; New York, NY; Bullhead City, AZ; Dayton, OH; Providence, RI; Nashville, TN; Las Vegas, NV; Seattle, WA; Wenatchee, WA; Raleigh, NC; Tulsa, OK; Buffalo, NY; Cincinnati, OH; Rochester, NY; Jacksonville, FL; San Antonio, TX; Riverside, CA; Oklahoma City, OK; Fresno, CA; Philadelphia, PA; Hartford, CT; Tucson, AZ; Phoenix, AZ; Albuquerque, NM; Albany, NY; Casper, WY; Long Island, NY; Kansas City, MO; Charlotte, NC; Salt Lake City, UT; Portland, OR; Houston, TX; Delta (Grand Junction), CO; Albany, NY; Key West, FL; Colorado Springs, CO; Las Cruces, NM; Corpus Christi, TX; Orlando, FL; El Paso, TX; Lansing, MI; San Antonio, TX; Evansville, IN; Amarillo, TX; Knoxville, TN; Nashville, TN; Rochester, NY; Rutland, VT; Greeley, CO; Houston, TX; Reading, PA; St. Lucie County, FL; Lorain County, Ohio; Athens, GA; and Waco, TX. *See, e.g.,* T-Mobile Complaint Appendix A.

12. Morningstar, "Communication Services Observer" (November 2022), at 30, 46 (lease figure is on a MHz-Pops basis).

13. T-Mobile effectively admits its historic dominance in the purchase of EBS spectrum rights in its Complaint in this case: "Until an FCC rule change in April 2020, EBS licenses could be held only by educational institutions (and not commercial entities). To build its nationwide cellular and data network, T-Mobile leased much of that wireless spectrum from the educational institutions that hold the licenses. . . . At the time of this complaint, T-Mobile holds leases on more than 1,500 licenses for 2.5 GHz spectrum." T-Mobile Complaint at 2–3, 13.

1 reviewing and approving spectrum license sales and
2 leases. Only the FCC can issue a new wireless spectrum
3 license. 2.5 GHz spectrum is an extremely scarce, finite
4 resource.

5 b. *Information costs.* Successful entry by a purchaser of an
6 EBS license in a relevant market requires access to any
7 existing lease terms that it will assume under the
8 license. Without knowing the terms of the leases that
9 will apply, license purchasers are unable to value the
10 license accurately and determine a competitive price for
11 it. T-Mobile has increased these barriers to entry
12 significantly through its tight restrictions on disclosure
13 of the terms of its leases, refusing to permit its license
14 lessors to share critical information with prospective
15 license purchasers such as WCO Spectrum. Because T-
16 Mobile controls almost all EBS leases, its refusal to
17 permit this information to be shared raises information
18 cost barriers in the relevant markets to an extremely
19 high level.
20

21 c. *Access to Capital.* The capital costs necessary to become
22 an entrant in any relevant market are substantial, and
23 economies of scale in the cost of capital cannot be reached
24 without purchasing a nucleus of spectrum rights across
25 multiple relevant markets. Certainly, WCO Spectrum is
26 not able to implement its revolutionary vision described
27
28

1 above, which requires a critical mass of spectrum, apart
2 from access to extremely significant amounts of capital.

3
4 **T-MOBILE'S EXCLUSIONARY
AND ANTICOMPETITIVE CONDUCT**

5 43. T-Mobile has willfully maintained its monopsony power in the
6 relevant markets in at least three anticompetitive and exclusionary ways:
7 (a) restrictive lease terms with EBS license holders designed to foil
8 competitive bidding; (b) defensive acquisitions of EBS licenses that
9 strengthen its monopsony; and (c) a campaign of lawfare and threats
10 designed to intimidate its EBS license lessors from seeking competitive
11 bids including selling competitively to WCO Spectrum. These actions
12 have allowed T-Mobile to suppress competition and maintain the
13 anticompetitively depressed prices it pays to license holders by blocking
14 competitive offers from at least WCO Spectrum.
15

16 **T-Mobile's Anticompetitive and Exclusionary Lease Provisions**

17 44. T-Mobile's lease contracts with EBS license holders have had
18 the effect of significantly raising its rival WCO Spectrum's costs and/or
19 excluding WCO Spectrum from the relevant markets, thereby insulating
20 and maintaining T-Mobile's monopsony pricing, through at least the
21 following lease terms:
22

- 23 a. *Exclusivity.* T-Mobile's EBS leases include an
24 "Exclusivity" term providing that its FCC license lessors
25 "will not negotiate or contract with any third party to
26 lease, sell, assign, transfer or use any of the capacity of
27 the [license frequency] Channels." T-Mobile admits that
28

1 the effect of this “Exclusivity” term is to exclude WCO
2 Spectrum from the relevant markets. For example, in an
3 August 11, 2021 letter from T-Mobile’s Senior Counsel to
4 an attorney for the Christian College of Georgia, T-
5 Mobile asserted that this provision prohibits its lessors
6 from “[s]elling the [FCC] license to WCO . . . Selling the
7 License to WCO obviously would constitute ‘[c]ontracting
8 with [a] third party to . . . sell . . . any of the capacity of
9 the Channels,’ and therefore is not permitted under the
10 exclusivity provision. . . . In short, the Lease does not
11 permit the College to sell or assign the License to
12 WCO.”¹⁴

13
14 b. *Rights to receive information.* T-Mobile’s leases also
15 contain provisions, including a “Right to Participate,”
16 that require its lessors to produce extremely
17 burdensome, unnecessary, and costly amounts of
18 information in the event that the lessor receives a bid,
19 offer, or proposal for the sale of its FCC license. T-
20 Mobile’s correspondence with its license lessors in
21 response to WCO Spectrum purchase offers explains that
22 these lease provisions require the production of large
23 amounts of information to T-Mobile and asserts in effect
24 that the terms of the lease grant to T-Mobile plenary
25

26
27 14. August 11, 2021 Letter from Heather Brown, T-Mobile Senior Counsel, to
28 James Johnston, Attorney for Christian College of Georgia.

1 control of the lessor-WCO Spectrum transaction.¹⁵ These
2 lease requirements have made (and make) it extremely
3 difficult and costly for WCO Spectrum and EBS license
4 holders to conclude the purchase and sale of EBS licenses
5 that are under lease to T-Mobile. These leases have had
6 the effect of discouraging the license lessor's efforts to
7 seek competitive bids, raising significantly its rival WCO
8 Spectrum's costs of completing procompetitive purchases
9 of EBS licenses in the relevant markets, and raising
10 barriers to entry in the relevant markets.

11
12 c. *Right of first refusal.* T-Mobile's leases also contain a
13 right of first refusal (ROFR). This right permits T-Mobile
14 to purchase the license and thereby maintain its
15 monopsony position by foreclosing its sale to a
16 competitor.¹⁶ Furthermore, the ROFRs exist not only for
17 the pendency of these long-term leases, but extend an
18 additional 12 to 24 months beyond the term of the lease.
19 Almost unbelievably, the ROFR thus gives T-Mobile the
20 right to make a license purchase even after it is no longer
21 leasing and using the licensed EBS spectrum. The effect
22 of this perverse provision is to extend T-Mobile's
23

24 15. See May 11, 2021 Letter from Heather Brown, T-Mobile Director of Legal
25 Affairs, to Jeffrey L. Strader, Vice President for Finance and Strategic Partnerships,
26 Albright College (attaching 16 information requests); March 17, 2022 Letter from
27 Kenneth J. Brown of T-Mobile counsel Williams & Connolly, to Todd D. Gray, counsel
28 for School Board of St. Lucie County, Florida (attaching 22 information requests).

16. See T-Mobile Complaint Appendix A for a list of T-Mobile's exercises of its
ROFR in response to license purchase offers from WCO Spectrum.

1 monopsony power to exclude competition even after it
2 has ceased to derive any conceivable procompetitive
3 benefit from utilizing the spectrum. The obvious benefit
4 of the ROFR provisions rather is to further T-Mobile's
5 ability to maintain and perpetuate its monopsony power.
6 They have raised substantially the costs to WCO
7 Spectrum and EBS licenses owners of completing
8 purchases and sales that would increase competition in
9 the relevant markets by wresting EBS licenses from T-
10 Mobile's monopsonistic control.

11 45. The above-described T-Mobile leases from FCC license holders
12 cover the vast majority of EBS licenses. Furthermore, the leases are
13 exceedingly long: typically, 30 years. The breadth and length of
14 anticompetitive foreclosure in the relevant markets is extreme and act to
15 lock-in the license holders.

16 46. The T-Mobile leases foreclose WCO Spectrum and others from
17 purchasing EBS licenses or, at the very least, significantly raise the costs
18 of purchasing EBS licenses. Either way, the prices that EBS licensees can
19 obtain for their spectrum rights remain suppressed well below
20 competitive levels. Transactions in which WCO Spectrum has made an
21 offer to a T-Mobile license owner have yielded 2–5 times the relative price
22 to the EBS holder when compared to transactions in which T-Mobile is
23 the sole offeror.

24 47. One victim of T-Mobile anticompetitive lease provisions,
25 Christian College of Georgia, explained to the FCC in 2021:
26
27
28

1 T-Mobile has made the stunning claim [under its lease] that
2 as mere lessee it controls to whom its lessor, licensee Christian
3 College, can sell: it can only sell to T-Mobile. T-Mobile first
4 made this claim after learning that the college had received an
5 unsolicited offer for its license of \$5.526 million from the
6 private investment company WCO Spectrum. T-Mobile's
7 counteroffer was \$1 million or 18% of WCO Spectrum's offer.
8 Although the Commission has clearly ruled EBS licensees are
9 free to sell, T-Mobile, which holds a majority position in the
10 2,046 EBS leases, ignores the precedent. . . . The \$5.526
11 million offered by WCO will advance the college's educational
12 needs far more than having that money tied up in a wireless
13 broadband system, the annual rent from which is but a
14 fraction of what the college can realize from an outright
15 sale . . . T-Mobile claims [its EBS] leases contain a Hobson[s]
16 Choice for licensees. Either sell to T-Mobile, or don't sell at
17 all.¹⁷
18

19 Despite the attractive nature of WCO Spectrum's offer, the tiny Christian
20 College of Georgia ultimately withdrew from the offer.

21 48. Additional examples of the anticompetitive effect on EBS
22 license prices flowing from T-Mobile's exclusionary lease provisions
23 include, inter alia: (a) WCO Spectrum made an offer to purchase La Roche
24 University's EBS license for \$13,000,000, in response to which T-Mobile
25 offered between \$3,000,000 and \$4,000,000. T-Mobile ultimately
26

27 17. Petition for Declaratory Ruling of Christian College of Georgia, Inc., *In The*
28 *Matter of the Right of EBS Licensees To Sell* (November 3, 2021), at 3, 14, 16.

1 exercised its ROFR, matching WCO Spectrum's offer and evidencing that
2 the competitive market price was only reached because of competition
3 from WCO Spectrum; and (b) WCO Spectrum offered Albright College
4 \$16,200,000 for its EBS license, in response to which T-Mobile, perched
5 in its lease-insulated monopsony position, offered only about \$4,000,000.
6 While the exact amount is unknown to WCO Spectrum, Albright ended
7 up selling its license to T-Mobile at a much lower price than that offered
8 by WCO Spectrum.

9
10 49. In sum, the effect of the provisions in T-Mobile's leases with
11 EBS license holders is to protect and enhance T-Mobile's monopsony
12 power by unreasonably restraining competition in the relevant markets.
13 T-Mobile's leases: (a) preclude outright the sale of EBS licenses to anyone
14 but T-Mobile; (b) impose substantial costs on WCO Spectrum and the
15 license seller to bring any transaction to completion; and are backstopped
16 by (c) T-Mobile's right of first refusal—which permits it ultimately to
17 block the acquisition of its lessor's EBS license by any competitor. The
18 effect of these anticompetitive lease provisions in the relevant markets is
19 to allow T-Mobile to maintain its monopsony to the concurrent detriment
20 of EBS license holders and competitors like WCO Spectrum. T-Mobile's
21 anticompetitive actions significantly drop the spectrum rights purchase
22 prices received by EBS license holders, and block companies including
23 WCO Spectrum from entry into the marketplace.

24 **T-Mobile's Anticompetitive License Purchases**

25 50. T-Mobile's second anticompetitive course of conduct involves
26 anticompetitive license purchases. Since the FCC changed its rules in
27 2020 to allow commercial entities to hold EBS licenses, T-Mobile has
28

1 defensively purchased over 500 EBS licenses of the roughly 2200 that
2 exist. These acquisitions have insulated and enhanced T-Mobile's existing
3 monopsony power in the relevant markets by raising entry barriers and
4 foreclosing competitive purchases by WCO Spectrum and any
5 other competitors.

6 51. Each time T-Mobile exercised its ROFR to block an EBS
7 license purchase by WCO Spectrum and made that purchase itself, it
8 foreclosed competition from WCO Spectrum in that relevant market.
9 Even though competition from WCO Spectrum had forced T-Mobile to pay
10 a higher price for the EBS license than the monopsonistic price it would
11 have paid, the competitive presence of WCO Spectrum in the relevant
12 market was reduced or eliminated by T-Mobile's purchase.

13
14 **T-Mobile's Intimidation of**
15 **EBS License Holders and Sham Litigation**

16 52. Finally, T-Mobile's third tactic: Commencing shortly after
17 WCO Spectrum refused to accept T-Mobile's invitation to rig bids, T-
18 Mobile began a blitzkrieg of threats and intimidation of its mostly small,
19 underfunded EBS lessors that had the effect of substantially raising WCO
20 Spectrum's costs of competing in, and/or excluding altogether, WCO
21 Spectrum from the relevant markets, as well as significantly raising entry
22 barriers for all potential competitors in the relevant markets.

23 53. On May 27, 2021, TDI Acquisition Sub, LLC, a holding
24 company subsidiary of T-Mobile, sued its lessor Albright College in the
25 Berks County Court of Common Pleas, Pennsylvania in response to WCO
26 Spectrum's offer to purchase Albright's EBS license in Reading, PA, for
27 \$16,200,000. This was a vast sum that would have funded scholarships
28

1 and numerous programs for this underfunded minority-focused college. T-
2 Mobile filed a baseless complaint without regard to its merits for
3 declaratory relief against Albright, alleging that WCO Spectrum's offer
4 was not "*bona fide*" under T-Mobile's lease terms (see *infra*). In this case
5 T-Mobile succeeded in using the process (as opposed to any outcome) to
6 thwart the sale. Albright College and WCO Spectrum never completed a
7 deal for Albright's EBS license. A small liberal arts college, Albright
8 lacked the financial resources and appetite to litigate with T-Mobile.
9 Instead, Albright abandoned the transaction with WCO, and T-Mobile
10 withdrew its complaint—settling so long as Albright agreed not to sell its
11 EBS license to WCO Spectrum.

12
13 54. T-Mobile used the *Albright* case also to impose substantial
14 costs on WCO Spectrum by pursuing extraordinarily invasive competitive
15 research into WCO Spectrum via non-party subpoenas. The issued
16 subpoenas were broad in scope, seeking sensitive information pertinent
17 to WCO Spectrum's strategies that bore no relevance to the transaction
18 with Albright College.¹⁸ The case was an abuse-of-process vehicle not only
19 to use the process to torment Albright, but to make an example for other
20

21 18. In fact, to stop the abusive and anticompetitive discovery by T-Mobile, Albright
22 and WCO Spectrum made binding representations to the Berks County court that they
23 would not complete a transaction, rendering the Albright Case moot. Nevertheless, T-
24 Mobile continued to press its multijurisdictional subpoenas seeking intrusive and
25 irrelevant discovery to a now-mooted action. T-Mobile abused the judicial process by
26 instigating numerous hearings in Delaware and Virginia to enforce the subpoenas
27 designed to learn everything about WCO Spectrum's business, its acquisition strategy,
28 its market models, and financing – all while creating enormous litigation expense for
WCO Spectrum. WCO Spectrum succeeded in limiting the scope of T-Mobile's
subpoenas to only those documents pertinent to the transaction underlying its cause
of action: WCO Spectrum's possible purchase of Albright College's EBS License. WCO
Spectrum nevertheless had to produce 11,448 pages of documents to T-Mobile
concerning the potential transaction between WCO Spectrum and Albright College.

1 educational institutions that might consider doing a deal with
2 WCO Spectrum.

3 55. Apparently not all educators got the message. So, on March
4 25, 2022, NSAC, LLC (another subsidiary of T-Mobile) sued its lessor the
5 School Board of St. Lucie County, Florida. WCO Spectrum had made an
6 offer to purchase St. Lucie's two EBS licenses for \$7,550,000. After
7 threatening litigation, T-Mobile filed a baseless complaint nearly
8 identical to its complaint in the Albright matter, seeking to block the sale
9 of the license under the parties' lease. Faced with a lawsuit that could
10 bankrupt the school district, St. Lucie withdrew from the agreement to
11 sell its EBS licenses to WCO Spectrum.

12 56. On April 14, 2023, T-Mobile filed a third baseless lawsuit
13 against Lorain County Community College ("LCCC"), another of its
14 lessors that proposed to sell its EBS license to WCO Spectrum. LCCC
15 declared that it would accept WCO Spectrum's offer if T-Mobile did not
16 match it. As a result of the tremendous costs imposed on WCO Spectrum
17 and LCCC by the lawsuit, the sale to WCO Spectrum was abandoned, and
18 T-Mobile withdrew its complaint.¹⁹

19 57. T-Mobile also threatened dozens of other lawsuits, verbally or
20 in writing, against its lessors in cases where WCO Spectrum had made
21 offers to purchase EBS licenses and circulated copies of the Albright
22

23
24 19. In addition, on May 6, 2022, T-Mobile commenced another lawsuit in
25 Philadelphia County, this one against WCO Spectrum itself. But it did not file a
26 complaint. Instead, T-Mobile petitioned the Philadelphia court to permit it pre-
27 complaint discovery. After a lengthy hearing, the Philadelphia court rejected T-
28 Mobile's request and entered a protective order against T-Mobile. Unable to further
pursue its cost-imposing discovery through the Philadelphia lawsuit, T-Mobile
eventually dismissed its lawsuit without ever filing a complaint.

1 complaint. Word spread quickly in the educational community, and WCO
2 Spectrum's efforts to solicit bids were met with timid and fearful
3 responses from EBS license holders, who were extremely reluctant to
4 incur the huge costs of battling their behemoth lessee T-Mobile in court.
5 As stated by Christian College of Georgia to the FCC: "Christian College
6 viewed the letter [from TMO Senior Counsel Heather Brown regarding a
7 proposed license sale to WCO Spectrum] as a threat of court litigation if
8 it negotiated with WCO. It couldn't afford a court fight with T-Mobile. It
9 did not desire to play David to T-Mobile's Goliath."²⁰

10 58. License holders that T-Mobile threatened with lawsuits
11 include, inter alia: Christian College of Georgia; La Roche University;
12 Pasadena Unified School District; Education Service Center Region 12,
13 Texas; New Trier High School; and Radio Training Network (RTN). RTN,
14 for example, accepted a \$4.5 million offer for its EBS license from WCO
15 Spectrum. After being threatened by T-Mobile's counsel in a phone call,
16 and being sent T-Mobile's Albright College complaint, RTN withdrew
17 from its agreement to sell to WCO Spectrum.
18

19 59. T-Mobile's many lawsuits and threatened lawsuits were all
20 objectively baseless. T-Mobile's lawsuits and threats included
21 misrepresenting to its EBS license holders applicable law, FCC rules, and
22 the meaning of contractual provisions. For example, T-Mobile's ROFR
23 lease provisions state that it has the right to acquire the holder's EBS
24 license on the same terms as any "*bona fide*" third party offer received by
25 the license holder. T-Mobile, however, has interpreted the term "*bona*
26

27 20. Petition for Declaratory Ruling of Christian College of Georgia, Inc., *In The*
28 *Matter of the Right of EBS Licensees To Sell* (November 3, 2021), at 6.

1 *fide*” so broadly as to give itself effective veto power over proposed
2 transactions with WCO Spectrum, and to require the production of
3 burdensome amounts of information before it will even consider whether
4 an offer can be deemed “*bona fide*.” T-Mobile’s lawsuits and threats of
5 lawsuits did not constitute genuine petitioning, but instead sought to use
6 the process as an anticompetitive weapon that would interfere directly
7 with the business relationships of a competitor, WCO Spectrum.

8
9 60. T-Mobile’s pattern of lawsuits and threats of lawsuits were
10 brought under a T-Mobile policy of starting legal proceedings without
11 regard to the merits and for the purpose of injuring a market rival, WCO
12 Spectrum. They were made, not out of a genuine interest in redressing
13 grievances, but as part of a pattern or practice of successive filings and
14 threats of filings undertaken essentially for purposes of harassment. That
15 T-Mobile has acted without regard to the success of its lawsuits against
16 lessors proposing license sales to WCO Spectrum is evidenced by the fact
17 that it has never followed through on them. T-Mobile has never litigated
18 one of these cases to finality or a damages award. Instead, it has
19 withdrawn each baseless lawsuit after the license holder’s transaction
20 with WCO Spectrum has fallen through due to the costs imposed on the
21 license holder and WCO Spectrum by the lawsuit.

22 61. The purpose and effect of T-Mobile’s lawsuits and threatened
23 lawsuits has been to impose direct restraints in the relevant markets and
24 on its rival WCO Spectrum by raising substantially the costs to T-Mobile’s
25 lessors and rivals of overcoming its monopsony maintenance scheme. T-
26 Mobile’s lawsuits and numerous threats have created a reputation across
27 the relevant markets that it will sue lessors that deal with WCO
28

1 Spectrum, which in itself has imposed significant costs on WCO Spectrum
2 in dealing with any of T-Mobile's lessors, without T-Mobile having to incur
3 the additional costs of litigating with each lessor. T-Mobile's campaign of
4 intimidation of license holders approached by WCO Spectrum has thereby
5 also raised entry barriers in the relevant markets substantially.

6 62. The effect of T-Mobile's monopsonistic campaign to frighten its
7 license holders through lawfare is to foreclose WCO Spectrum or others
8 from purchasing EBS licenses and/or to raise significantly their costs of
9 doing so, with the result that the prices EBS license holders can obtain
10 for their spectrum rights are suppressed well below competitive levels.
11 Again, transactions in which WCO Spectrum has made an offer to a T-
12 Mobile license owner have yielded 2–5 times the relative price to the EBS
13 license holder when compared to transactions in which T-Mobile is the
14 sole offeror.

15 ANTITRUST INJURY

16
17 63. Sellers in a monopsony case have the same antitrust
18 protections as buyers in a monopoly case. One key harm of monopsonistic
19 conduct is price suppression: forcing sellers to accept prices *below*
20 competitive levels.

21 64. T-Mobile's actions excluded WCO Spectrum from the
22 marketplace and forced EBS license sellers to accept lower prices. In other
23 words, the same conduct that harmed "consumers" (or, in this case,
24 sellers) also harmed the competitive process and WCO Spectrum. T-
25 Mobile's exclusionary leases and other conduct thus have harmed both
26 EBS/BRS spectrum rights sellers and WCO Spectrum.
27
28

1 65. Because T-Mobile's exclusion of WCO Spectrum from the
2 market is what suppresses and maintains the prices sellers can obtain
3 below competitive levels, and WCO's injury arises from that same
4 conduct, WCO Spectrum's injury is the type of injury the antitrust laws
5 were intended to prevent, and it flows from that which makes T-Mobile's
6 acts unlawful.

7
8 **CAUSATION/INJURY-IN-FACT**

9 66. As a result of T-Mobile's anticompetitive conduct and
10 contracts, the relevant markets have been unlawfully affected, leading to
11 and maintaining sub-competitive, monopsonistic prices for EBS/BRS
12 spectrum rights, and to the exclusion of competing purchasers such as
13 WCO Spectrum from, and/or to the significantly raised costs of competing
14 purchasers such as WCO Spectrum in, the relevant markets.

15 67. As a result of T-Mobile's anticompetitive conduct and
16 exclusionary practices, WCO Spectrum has suffered threatened and
17 actual antitrust injury by being excluded from purchasing EBS/BRS
18 spectrum rights, thereby suffering actual losses, lost license purchases,
19 and lost profits.

20 68. WCO Spectrum therefore seeks an award of damages in an
21 amount to be proven at trial, as well as injunctive relief precluding T-
22 Mobile from continuing its exclusionary practices, including injunctive
23 relief against the anticompetitive and exclusionary provisions contained
24 in its leases with EBS license holders.
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INTERSTATE COMMERCE

69. The activities of the parties that are the subject of these Counterclaims are within the flow of, and have substantially affected, interstate trade and commerce.

70. The various activities and conduct that are the subject of these Counterclaims occurred and are occurring across state lines.

COUNTERCLAIM I
Monopsonization
15 U.S.C. § 2

71. WCO Spectrum realleges and incorporates all previous paragraphs of its counterclaim.

72. T-Mobile has monopsony power in the relevant markets for EBS/BRS spectrum rights. T-Mobile is actively excluding competition and controlling price at sub-competitive levels as described throughout this counterclaim complaint. In addition to its monopsony market shares and significant barriers to entry, this demonstrates T-Mobile's monopsony power.

73. Through its anticompetitive and exclusionary conduct, T-Mobile has unlawfully maintained its monopsony power in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

74. T-Mobile could not maintain its substantial monopsony power in the relevant markets for EBS/BRS spectrum rights but for its anticompetitive and exclusionary agreements with EBS license holders, its anticompetitive purchases of EBS licenses, its sham lawsuits and threats of lawsuits, and its other anticompetitive conduct.

1 75. T-Mobile's conduct maintaining and enhancing its monopsony
2 power has harmed competition in the relevant markets by causing sub-
3 competitive, monopsonistic purchase prices for EBS/BRS spectrum rights
4 and by excluding and/or raising substantially the costs of WCO Spectrum,
5 a competitor bidding purchase prices to EBS license holders up to
6 competitive levels. Among other things, T-Mobile's conduct has harmed
7 competition by reducing EBS license-holder choice, suppressing prices
8 below competitive levels, and curtailing and/or blocking introduction of
9 new competition in the relevant markets by WCO Spectrum.

10 76. There is no legitimate business justification for T-Mobile's
11 exclusionary and anticompetitive conduct that has caused antitrust
12 injury, and continues to cause antitrust injury, to WCO Spectrum, and no
13 purported justification would outweigh the considerable harm to
14 competition in the relevant markets from T-Mobile's conduct.

15 77. T-Mobile's monopsony maintenance, and the effects of that
16 conduct in the relevant markets, have directly caused antitrust injury and
17 damage, and continue to cause antitrust injury and damage, to WCO
18 Spectrum's business and property by, among other things, blocking WCO
19 Spectrum's purchases of EBS spectrum rights and raising WCO
20 Spectrum's costs of pursuing and completing transactions that are
21 beneficial to EBS spectrum license holders. WCO Spectrum will suffer
22 additional damage in the future if T-Mobile is permitted to continue its
23 monopsonistic conduct. WCO Spectrum has thereby suffered lost license
24 sales to it by license holders and lost profits in the relevant markets. T-
25 Mobile's conduct continues to threaten injury to WCO Spectrum's
26 business and property, thereby justifying permanent injunctive relief.
27
28

COUNTERCLAIM II
Attempted Monopsonization
15 U.S.C. § 2

78. WCO Spectrum realleges and incorporates all previous paragraphs of its counterclaim.

79. Through its anticompetitive and exclusionary conduct, T-Mobile has unlawfully attempted to monopsonize the relevant markets for EBS/BRS spectrum rights in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

80. T-Mobile's conduct establishes a specific intent to destroy competition or build monopsony in the relevant markets for EBS/BRS spectrum rights. T-Mobile's specific intent to monopsonize is also evidenced in that much of its exclusionary conduct followed its rejected invitation to WCO Spectrum to cartelize bid prices in the relevant markets.

81. Because of T-Mobile's significant market power in the relevant markets for EBS/BRS spectrum rights, its exclusionary conduct creates a dangerous probability that T-Mobile will obtain monopsony power in the relevant markets, including the power to unilaterally exclude competition, eliminate innovation, and/or suppress EBS/BRS spectrum rights purchase prices.

82. T-Mobile's attempted monopsonization has harmed competition in the relevant markets by causing sub-competitive purchase prices for EBS/BRS spectrum rights and by excluding and/or raising substantially the costs of WCO Spectrum, a competitor bidding purchase prices to EBS license holders up to competitive levels. Among other things, T-Mobile's conduct has harmed competition by reducing EBS

1 license holder choice, suppressing prices below competitive levels, and
2 curtailment and/or blocking introduction of new competition in the relevant
3 markets by WCO Spectrum.

4 83. There is no legitimate business justification for T-Mobile's
5 exclusionary and anticompetitive conduct that has caused antitrust
6 injury, and continues to cause antitrust injury, to WCO Spectrum, and no
7 purported justification would outweigh the considerable harm to
8 competition in the relevant markets from T-Mobile's conduct.

9 84. T-Mobile's attempted monopsonization, and the effects of that
10 conduct in the relevant markets, have directly caused antitrust injury and
11 damage, and continue to cause antitrust injury and damage, to WCO
12 Spectrum's business and property by, among other things, blocking WCO
13 Spectrum's purchases of EBS spectrum rights and raising WCO
14 Spectrum's costs of pursuing and completing transactions that are
15 beneficial to EBS spectrum license holders. WCO Spectrum will suffer
16 additional damage in the future if T-Mobile is permitted to continue its
17 monopsonistic conduct. WCO Spectrum has thereby suffered lost license
18 sales to it by license holders and lost profits in the relevant markets. T-
19 Mobile's conduct continues to threaten injury to WCO Spectrum's
20 business and property, thereby justifying permanent injunctive relief.

21
22 **COUNTERCLAIM III**
23 **Agreement in Restraint of Trade**
24 **15 U.S.C. § 1**

25 85. WCO Spectrum realleges and incorporates all previous
26 paragraphs of its counterclaim.
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1 86. T-Mobile entered into anticompetitive, exclusionary lease
2 agreements with EBS spectrum license holders. Each lease agreement
3 constitutes a “contract, combination . . . or conspiracy” within the meaning
4 of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5 87. T-Mobile’s monopsony power alleged above constitutes
6 “market power” under Section 1 of the Sherman Act, 15 U.S.C. § 1.

7 88. T-Mobile’s anticompetitive, exclusionary lease agreements
8 affect a substantial amount of commerce in the relevant markets for
9 EBS/BRS spectrum rights.

10 89. T-Mobile’s anticompetitive, exclusionary lease agreements
11 have unreasonably restrained trade and harmed competition in the
12 relevant markets for EBS/BRS spectrum rights in violation of Section 1
13 of the Sherman Act, 15 U.S.C. § 1, by causing sub-competitive purchase
14 prices for EBS/BRS spectrum rights and by excluding and/or raising
15 substantially the costs of WCO Spectrum, a competitor bidding purchase
16 prices to EBS license holders up to competitive levels. Among other
17 things, T-Mobile’s lease contracts have harmed competition by reducing
18 EBS license holder choice, suppressing prices below competitive levels,
19 and curtailing and/or blocking introduction of new competition in the
20 relevant markets by WCO Spectrum.

21 90. There is no legitimate business justification for T-Mobile’s
22 exclusionary and anticompetitive lease provisions that have caused
23 antitrust injury, and continue to cause antitrust injury, to WCO
24 Spectrum, and no purported justification would outweigh the
25 considerable harm to competition in the relevant markets from the
26 restraints contained in T-Mobile’s leases with EBS license holders.
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1 91. T-Mobile's anticompetitive and exclusionary lease agreements
2 have directly caused antitrust injury and damage, and continue to cause
3 antitrust injury and damage, to WCO Spectrum's business and property
4 by, among other things, blocking WCO Spectrum's purchases of EBS
5 spectrum rights and raising WCO Spectrum's costs of pursuing and
6 completing transactions that are beneficial to EBS spectrum license
7 holders. WCO Spectrum will suffer additional damage in the future if T-
8 Mobile is permitted to maintain its anticompetitive lease terms with EBS
9 license holders. WCO Spectrum has thereby suffered lost license sales to
10 it by license holders and lost profits in the relevant markets. T-Mobile's
11 conduct continues to threaten injury to WCO Spectrum's business and
12 property, thereby justifying permanent injunctive relief.

13
14 **COUNTERCLAIM IV**
15 **Agreement in Violation of California Cartwright Act,**
16 **Cal. Bus. & Prof. Code §§ 16720 et seq.**

17 92. WCO Spectrum realleges and incorporates all previous
18 paragraphs of its counterclaim.

19 93. T-Mobile's lease agreements with its license holder lessors, as
20 alleged above, constitute concerted action that is an unreasonable
21 restraint of trade or commerce throughout California and the United
22 States in violation of the Cartwright Act, §§ 16720 et seq. of the California
23 Business and Professions Code. The leases had and have the effect of
24 eliminating competition in the relevant markets and ensuring that T-
25 Mobile maintained and continues to maintain its monopsony power in the
26 relevant markets.

27 94. WCO Spectrum has been injured as a direct and proximate
28 result of the T-Mobile lease agreements and surrounding conduct. In

1 addition, sellers in the relevant markets have been harmed by the actions
2 of T-Mobile, and that harm is ongoing. The lease agreements have had
3 the effect of decreasing sales prices in the relevant markets below
4 competitive levels, as well as reducing market innovation.

5 95. As a result of T-Mobile's conduct, and the harm to competition
6 caused by it, WCO Spectrum has suffered substantial injuries to its
7 business and property in an amount to be proven at trial and
8 automatically trebled, as provided by the Cartwright Act.

9 96. WCO Spectrum is also entitled to recover from T-Mobile the
10 costs of suit, including reasonable attorneys' fees, as provided by
11 § 16750(a) of the California Business and Professions Code.

12 **COUNTERCLAIM V**

13 **Unfair Competition in Violation of California's Unfair** 14 **Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.**

15 97. WCO Spectrum realleges and incorporates all previous
16 paragraphs of its counterclaim.

17 98. By the acts alleged above, T-Mobile has engaged, and
18 continues to engage, in unlawful and unfair business acts or practices in
19 violation of California Business and Professions Code §§ 17200 et seq.
20 ("California's Unfair Competition Law").

21 99. T-Mobile has violated the Sherman Act and the Cartwright
22 Act, and thus T-Mobile has violated California's Unfair Competition Law.

23 100. T-Mobile's acts and business practices, whether or not in
24 violation of the Sherman Act or Cartwright Act, constitute unfair methods
25 of competition in violation of California's Unfair Competition Law.
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1 101. T-Mobile's acts and business practices are otherwise unfair
2 within the meaning of California's Unfair Competition Law, and thus T-
3 Mobile has violated California's Unfair Competition Law.

4 102. T-Mobile's unlawful and unfair business acts and practices
5 significantly threaten and harm competition in the relevant markets
6 alleged above.

7 103. WCO Spectrum seeks, and is entitled to, all forms of relief
8 available under California's Unfair Competition Law. Pursuant to
9 § 17203, WCO Spectrum seeks from T-Mobile restitution and
10 disgorgement of all earnings, profits, compensation, benefits, and other
11 ill-gotten gains obtained by T-Mobile as a result of its conduct in violation
12 of Cal. Bus. & Prof. Code §§ 17200 et seq.

13
14 104. T-Mobile should also be permanently enjoined from continuing
15 its violations of California Business and Professions Code § 17200, as
16 provided by § 17203 of the California Business and Professions Code.
17 Without injunctive relief, WCO Spectrum will continue to suffer
18 irreparable injury as a result of T-Mobile's unlawful conduct. WCO
19 Spectrum's remedy at law is not by itself adequate to compensate WCO
20 Spectrum for the harm inflicted and threatened by T-Mobile.

21 **COUNTERCLAIM VI**
22 **Intentional Interference with**
23 **Prospective Economic Advantage Under California Law**

24 105. WCO Spectrum realleges and incorporates all previous
25 paragraphs of its counterclaim.

26 106. At the time of WCO Spectrum's anticompetitive and
27 exclusionary conduct, WCO Spectrum was engaged in negotiations with
28 T-Mobile EBS license holders, as described above, and WCO Spectrum

1 also anticipated engaging in similar negotiations with other T-Mobile
2 EBS license holders. The combined value of that business to WCO
3 Spectrum, while subject to proof at trial, was at least tens of millions
4 of dollars.

5 107. T-Mobile was aware of WCO Spectrum's negotiations with
6 EBS license holders, and its prospective negotiations with other EBS
7 license holders, and undertook the anticompetitive and unlawful scheme
8 described above to undermine WCO Spectrum's negotiations and ensure
9 that WCO Spectrum was not awarded contracts for purchase of
10 the licenses.

11 108. Through its conduct, T-Mobile intended to, and did, disrupt
12 WCO Spectrum's relationships with EBS license holders.

13 109. WCO Spectrum's relationships with EBS license holders were
14 ultimately disrupted by T-Mobile's scheme, as such license holders
15 informed WCO Spectrum that they could not award WCO Spectrum their
16 business because of the tremendous costs imposed on them and threats
17 levied at them by T-Mobile.

18 110. WCO Spectrum has been injured in its business or property by
19 the loss of profits, by the loss of license sellers and potential sellers, by
20 the loss of goodwill and business image, and by the prospective
21 destruction of its business. T-Mobile's conduct was a substantial factor in
22 causing this harm.

23 111. T-Mobile's conduct was intentional and deprived WCO
24 Spectrum of business opportunities in violation of the law, and otherwise
25 caused injury and was despicable conduct that subjected WCO Spectrum
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1 to cruel and unjust hardship and oppression in conscious disregard of its
2 rights, so as to justify an award of exemplary and punitive damages.

3 112. Unless enjoined, T-Mobile's conduct is likely to persist and will
4 continue to cause irreparable loss and damage to WCO Spectrum for
5 which WCO Spectrum has no adequate remedy at law.

6 **REQUEST FOR RELIEF**

7 WHEREFORE, WCO Spectrum requests that this Court:

- 8 A. Enter judgment against T-Mobile;
- 9 B. Declare that T-Mobile's conduct violates 15 U.S.C. §§ 1
10 & 2;
- 11 C. Declare that T-Mobile's conduct violates the California
12 Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 et seq., the
13 California Unfair Competition Law, Cal. Bus. & Prof. Code
14 §§ 17200 et seq., and California Law governing Intentional
15 Interference with Prospective Economic Advantage.
- 16 D. Enjoin T-Mobile from continuing its unlawful acts;
- 17 E. Award WCO Spectrum three times its actual damages
18 under 15 U.S.C. § 15 in an amount to be determined at trial;
- 19 F. Award WCO Spectrum its costs and expenses of this
20 action, including its reasonable attorneys' fees necessarily
21 incurred in bringing and pressing this case, as provided in 15
22 U.S.C. §§ 15, 26;
- 23 G. Award WCO Spectrum its pre- and post- judgment
24 interest at the applicable rates on all amounts awarded;
- 25
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1 H. Enjoin T-Mobile from enforcing the anticompetitive and
2 exclusionary lease provisions with EBS lease holders described
3 above;

4 I. Grant permanent injunctive relief to prevent the
5 recurrence of the violations for which redress is sought in this
6 complaint;

7 J. Award WCO Spectrum all the relief to which it is entitled
8 under the California Cartwright Act, Cal. Bus. & Prof. Code
9 §§ 16720 et seq., the California Unfair Competition Law, Cal. Bus.
10 & Prof. Code §§ 17200 et seq., and California Law governing
11 Intentional Interference with Prospective Economic Advantage; and
12

13 K. Order any other such relief as the Court deems
14 appropriate.

15 **DEMAND FOR JURY TRIAL**

16 WCO Spectrum demands a trial by jury of all issues in this action
17 so triable.

18
19 DATED: March 31, 2025

20 /s/ Aaron Gott

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