

**INTERLOCAL RADIO SYSTEM USAGE AGREEMENT
(Subscriber Participant Agreement)**

This Interlocal Agreement (“Agreement”) is made and entered into on this ____ day of _____ 2019 by and between the **CITY OF GARLAND** (“Garland”) and **CITY OF MESQUITE** (“Mesquite”), Texas home-rule municipalities (collectively, the “System Owners”), and the **CITY OF SACHSE**, (“Sachse”) a Texas home-rule municipality. System Owners and Sachse may be collectively referred to as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, System Owners and Sachse are local governments within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”), provides authority for local governments of the State of Texas to enter into Interlocal Agreements with one another for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, the System Owners and Sachse wish to enter into this Agreement to provide for the use of a portion of the additional capacity of the 700 MHz System by Sachse under such terms as will not interfere with the use, ownership or operation of the 700 MHz System by the System Owners; and

WHEREAS, System Owners have investigated and determined that it would be advantageous and beneficial to the citizens of their respective jurisdictions to purchase and implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards (the “System”); and

WHEREAS, the Parties acknowledge that System Owners have entered into *The City of Garland and the City of Mesquite Radio System Interlocal Agreement* dated July 7, 2015 (the “Garland/Mesquite Radio System ILA”), a copy of which has been provided to Sachse regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System; and

WHEREAS, Sachse has investigated and determined that it would be advantageous and beneficial to the citizens of Sachse to participate in the new System as a Subscriber Participant (defined below).

NOW, THEREFORE, under the authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, the System Owners and Sachse, for the mutual consideration hereinafter stated, agree as follows:

Section 1. General.

1.01 Definitions.

“700 MHz System” shall mean the 700 MHz frequencies of the System that System Owners are providing for Sachse’s use.

“Effective Date” means the later of the dates this Agreement is approved by the governing bodies of the System Owners and Sachse and signed by the authorized representatives of each entity.

“Governance Board” means the administrative governing body tasked with the operation and administration of the System and being more particularly described in the Garland/Mesquite Radio System ILA.

“Infrastructure Components” means the equipment, materials, hardware, software, firmware, structures and other items composing a portion of the System.

“Infrastructure Participants” means municipalities, whether one or more, other than System Owners, that participate in the System by using services provided by the System and that own Infrastructure Components of the System located within their respective municipalities. Infrastructure Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

“Initial Term” means that period of time commencing upon the Effective Date and concluding at midnight on September 30th of the fifth calendar year thereafter.

“Participant” means an Infrastructure Participant or a Subscriber Participant and **“Participants”** collectively means all Infrastructure Participants and Subscriber Participants.

“Patching” means cross connecting a radio or Talk Group(s) to other Talk Group(s) or channel(s) on other radio systems.

“Renewal Term” means the five (5) year renewal periods following the Initial Term and beginning on the first day of October immediately following the conclusion of the Initial Term or prior Renewal Term and renewing on October 1st of each fifth calendar year thereafter (individually, a “Renewal Term”; collectively, the “Renewal Terms”).

“Shared Components” means the components of the System that are jointly owned by System Owners as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also mean the components of the System that will be owned by System Owners, but also used to support the operations of Sachse.

“Simulcast Cell” means a standalone multi-site trunked radio system that operates off the master site owned by System Owners.

“Subscriber” or **“Subscriber radio”** means an individual Motorola Phase 2 Project 25 radio used by Sachse.

“Subscriber Participant” means the various municipalities, school districts, and other third parties, other than Infrastructure Participants and the System Owners, that participate in the System by using services provided by the System and that own their own subscriber units (radios) or other related components, which provide access to the System. Subscriber Participants are referred to in the Garland/Mesquite Radio System ILA as “Non-Infrastructure Participants” and all references in this Agreement to “Subscriber Participant” or “Subscriber Participants” shall mean “Non-Infrastructure Participant” or “Non-Infrastructure Participants” under the Garland/Mesquite Radio System ILA. Subscriber Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

“System” means a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the Garland/Mesquite Radio System ILA and shall include the Shared Components, the Non-Shared Components, and all Infrastructure Components.

“System Owners Technical Advisory Board” means the group of technical personnel selected to advise the Governance Board and being more particularly described in Section 6.04 of the Garland/Mesquite Radio System Interlocal Agreement dated July 7, 2015, a copy of which has been provided to Sachse.

“Talk Group” means a specific channel name assigned to Sachse.

“Term” means, with the exception of the Initial Term as defined herein above, a five (5) year period, commencing on October 1 and terminating at midnight on September 30th of the fifth calendar year thereafter (the “Termination Date”), unless sooner terminated as provided herein, for each successive Renewal Term.

Section 2. Use of the 700 MHz System.

2.01 Capacity. The System Owners agree to provide Sachse use of additional capacity of the 700 MHz System. Exhibit A defines the number of Talk Groups and Subscribers Sachse is authorized to use on the System. As technical improvements are made to the 700 MHz System by the System Owners, and provided that the System Owners have sufficient system capacity (as determined by the System Owners in their sole discretion) for their own present and future needs and those of others with whom the System Owners may enter agreements for use of the additional capacity of the 700 MHz System, Sachse may add additional units to the 700MHz System under the same terms and conditions contained herein.

2.02 Notification by Subscriber Participant. Sachse, as a Subscriber Participant, agrees to notify the System Owners Technical Advisory Board of:

- (a) Sachse’s entire inventory of Subscriber radios being used on or in conjunction with the 700 MHz System; and
- (b) any changes in that inventory within ten (10) days after such change.

2.03 Talk Group Auto-Roaming. System Owners do not guarantee any Subscriber Participant's Talk Group will be authorized to operate on all tower sites in the System ("auto-roam"). A Subscriber Participant may request, in writing, that the System Owners authorize a Talk Group to auto-roam between towers on the System. In accordance with Article VI of the Garland/Mesquite Radio System ILA, the Technical Advisory Board shall review all such requests to ensure the request does not negatively impact the System's quality of service. The Technical Advisory Board shall recommend the Governance Board authorize or deny the request. The Governance Board shall then, at its sole and final discretion, authorize or deny the request and notify the Subscriber Participant of its decision.

Section 3. Terms of Use. The Subscriber Participant is to use the System strictly in accordance with, and under the terms of use set forth in, Exhibit A.

Section 4. Fees.

4.01 Payment. Sachse shall remit payments to Garland in the amount and manner set forth in Exhibit A.

4.02 Payment source. All payments made by Sachse under this Agreement must be made from current revenues available to Sachse.

4.03 Adjustment of fees. The System Owners may adjust the annual fees based on an estimation of their variable costs, such as maintenance and operating expenses. The System Owners shall provide Sachse with one hundred and twenty (120) days' prior written notice of any adjustment which would increase the annual fees.

4.04 Pro rata policy. In the event this Agreement terminates on any day other than September 30 of a given year of the Term, a refund or fee shall be made on a pro rata basis.

(a) If the Agreement terminates within a year for which Sachse has paid the annual fee, Sachse shall be entitled to a pro rata refund of fees paid.

(b) If the Agreement terminates during a year for which Sachse has not paid the annual fee, the System Owners shall be entitled to a pro rata payment of fees for the unpaid services. This pro rata payment shall be based upon the fee that would otherwise have been due on the October 1 immediately preceding the termination date, including any adjustment of the fees that has occurred, provided the System Owners sent written notice of the fee adjustment to Sachse prior to receiving the requisite written notice set forth in Section 6 below.

Section 5. System Management; Disclaimer of Warranties. It is understood by the Parties that the intent of this Agreement is only for airtime usage of the 700 MHz System, and does not provide Sachse control of the System or any part of the System. This Agreement does not provide Sachse with any ownership rights to any part of the System. **The System Owners make no representations or warranties, either express or implied, as to the System or its components, and Sachse acknowledges that the use of the System is being provided to Sachse on an "AS-IS", "WHERE IS" basis with any and all latent and patent defects. The System Owners**

expressly disclaim any warranty or representation as to the System's coverage, quality, dependability, performance, continuation of service, non-infringement, merchantability, fitness for any particular purpose or fitness for the uses intended by Sachse. Sachse assumes the entire risk as to the results and use of the System or its components. The System Owners shall not be liable to Sachse, its employees, agents, representatives, officials or to any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including, but not limited to, damages for any loss of use, time, data, goodwill, revenue or profit, in any way related to or arising from this Agreement, the use, misuse or non-use of the System by Sachse and/or any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System even if the System Owners have been advised of the possibility of such damages. The System Owners and their employees, agents, representatives and officials shall not be liable to Sachse, its employees, agents, representatives, officials or any other person or entity for personal injuries, death or property damage due to or arising from the use, misuse or non-use of the System by Sachse and/or arising from any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System. To the extent allowed by law, Sachse agrees to indemnify and hold the System Owners and their respective employees, agents, representatives and officials harmless from and against all liability of any nature whatsoever for personal injuries, death or damage to tangible property caused by or arising from the use, misuse or non-use of the System by Sachse. It is expressly intended by the Parties that the disclaimer of warranties and the indemnity by Sachse contained in this Section 5 shall expressly survive the expiration or termination of this Agreement.

Section 6. Termination.

6.01 Termination by owner. The System Owners may terminate this Agreement upon providing Sachse with the lesser of

(a) at least one hundred and twenty (120) days' written notice of termination for terminations made on an at-will basis; or

(b) thirty (30) days written notice to Sachse in the event Sachse fails to make any payment due or otherwise breaches an obligation of Sachse under this Agreement;

6.02 Termination by Sachse. Sachse may terminate this Agreement, at will and without cause or penalty, upon providing the System Owners with at least one hundred and twenty (120) days' written notice of termination.

6.03 Termination for failure to appropriate. Sachse agrees to notify the System Owners within five (5) business days if Sachse fails to appropriate funds for payment of its obligations under this Agreement. This Agreement will expire thirty (30) days after provision of the written notice.

6.04 Payment or refund of fees upon termination. Upon termination of this Agreement on any day other than September 30 of a given year, any payment or refund shall be on a pro rata basis as set forth in Section 4.04 of this Agreement.

Section 7. Garland/Mesquite Radio System ILA; Waiver, Release and Covenant Not to Sue.

The Parties acknowledge that Garland and Mesquite have entered into the Garland/Mesquite Radio System ILA, a copy of which has been provided to Sachse, regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System and that pursuant to the Garland/Mesquite Radio System ILA, Mesquite has certain rights to terminate the Garland/Mesquite Radio System ILA as more fully set forth in the Garland/Mesquite Radio System ILA. The Parties expressly agree that this Agreement does not alter, affect, modify or amend the Garland/Mesquite Radio System ILA in any manner including, without limitation, this Agreement does not affect or limit in any way Mesquite's right to terminate the Garland/Mesquite Radio System ILA. The Parties further agree that in the event Mesquite exercises its right to terminate the Garland/Mesquite Radio System ILA under the terms and subject to the conditions set forth in the Garland/Mesquite Radio System ILA, (i) the System as defined in this Agreement and the Participant Agreement shall no longer include any components of the System owned solely by Mesquite; (ii) upon such termination, neither Garland or Sachse shall have any right to access or use the components of the System that are owned solely by Mesquite; and (iii) upon such termination, any access or use of the Shared Components of the System shall be limited to the rights of access and use, if any, that expressly survive the termination of the Garland/Mesquite Radio System ILA.

Section 8. Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective two (2) days after deposit in the United States mail. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving all other Parties at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

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Notices to System Owners:

Garland Representative:

Chief Information Officer
City of Garland
1490 State Highway 66
Garland, Texas 75040

With a copy to:
City Attorney
City of Garland
200 North Fifth Street, 4th Floor
Garland, Texas 75040

Mesquite Representative:

With a copy to:
Fire Chief
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

With a copy to:
City Attorney
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

Notices to Sachse:

Sachse Representative:

City of Sachse
ATTN: Gina Nash
3815 Sachse Road, Building B
Sachse, Texas 75048

With a copy to:

Section 9. Dispute Resolution.

9.01 In general. In the event of a dispute between the Parties regarding the terms, performance, or any other aspect of this Agreement, the Parties shall attempt to resolve the dispute as set forth in this Section.

9.02 Opportunity to cure. If a Party asserts that any other Party(s) has breached any provision of this Agreement or any active Work Order, the non-breaching Party shall provide the breaching Party(s) written notification of the alleged breach, describing the facts and circumstances the non-breaching Party claims constitutes the breach. The breaching Party(s) shall have one hundred and twenty (120) days to cure any such breach.

9.03 Informal mediation. The Parties agree that, in the event of a dispute, the appropriate technical directors and other City officials, including, but not limited to, a representative from the Parties' respective City Attorney's office, shall conduct a meeting, via telephone or in person, and shall conduct a substantive discussion of each and every dispute in a good faith effort to resolve the dispute.

9.04 Formal mediation. In the event the Parties are unable to resolve the dispute through the informal mediation procedure set forth above, the Parties shall submit the dispute to formal mediation to be conducted at a mutually acceptable location in Dallas County, Texas. Formal mediation shall be a prerequisite for filing suit. The mediator shall be selected as follows:

(a) The Parties may jointly agree upon a particular mediator. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the Parties. The expenses of participants, such as expert witnesses for any side, shall be paid by the Party requesting the participant's attendance.

(b) If the Parties are unable to jointly agree upon a mediator, the Parties shall request Burdin Mediations ("Burdin") to appoint a mediator and conduct the mediation. All mediation expenses, including any fees imposed by Burdin as well as any required traveling and other expenses or charges of the mediator, shall be borne equally by the Parties. The expenses of participants for any Party shall be paid by the Party requesting the participant's attendance.

9.05 Litigation. In the event the Parties are unable to resolve any dispute through either informal or formal mediation, the dispute may be pursued through litigation.

9.06 Venue. The exclusive venue for all disputes shall be in any civil District Court of Dallas County, Texas.

9.07 Recovery of litigation costs. Each Party shall bear its own costs, reasonable expenses, expert fees and reasonable attorney's fees.

Section 10. No Assignment. No Party shall have the right to assign its interest in this Agreement without the prior written consent of the other Parties.

Section 11. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver. Both the System Owners and Sachse shall have the right to waive any requirement contained in this Agreement, which is intended for the waiving Party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the non-waiving Party(s). No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. All Parties have participated in the negotiation and

preparation of this Agreement, and this Agreement shall not be construed either more or less strongly against or for any Party.

Section 14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 15. Entire Agreement. It is understood and agreed that this Agreement contains the entire Agreement between the Parties and supersedes any and all prior agreements, arrangements or understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. This Agreement may only be modified by a writing signed by all Parties that expressly calls for its modification and not by implication from any other written document or oral agreement. This shall not prevent other documents from being incorporated by reference.

Section 16. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the Parties hereto shall be deemed to create any relationship between the Parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. There are no third-party beneficiaries to this Agreement and no third-party beneficiaries are intended by implication or otherwise.

Section 17. No Creation of Debt. To the extent, if any, that this Agreement imposes an obligation on any Party to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of said Agreement. All obligations of a Party under this Agreement are payable solely from that Party's operations budget in parity with all other operating expenses of that Party and no ad valorem tax revenue or other revenues of that Party shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Agreement nor shall any Party have the right to demand payment of any amounts under same be paid from funds raised or to be raised from ad valorem taxation. The obligations under this Agreement shall never be construed to be a debt or pecuniary obligation of any Party of such kind as to require that Party to levy and collect ad valorem taxes to discharge its obligations and no obligation of any Party to make a payment or other expenditure under same shall be payable through funds raised by taxation. No Party has created and no Parties are required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Agreement. To the extent not otherwise covered in this Agreement, each Party retains its governmental and sovereign immunities and its limitations of liability. The Parties agree that each Party is entering into this Agreement in its governmental capacity and the subject and nature of these agreements are governmental rather than proprietary. In any event, the procedures and limitations of Chapter 271, Texas Local Government Code apply.

Section 18. No Waiver of Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived any immunity or

defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

Section 19. Rights of Non-parties. Nothing contained in this Agreement shall be construed to give or grant any rights to persons or entities not a party to this Agreement.

EXECUTED this ____ day of _____, 2019.

CITY OF GARLAND, TEXAS

Bryan Bradford
City Manager

Approved as to form:

Stephen M. Hines
Sr. Assistant City Attorney

EXECUTED this ____ day of _____, 2019.

CITY OF MESQUITE, TEXAS

Cliff Keheley
City Manager

Approved as to form:

Ileana Fernandez
Assistant City Attorney

EXECUTED this ____ day of _____, 2019.

CITY OF SACHSE, TEXAS

Gina Nash
City Manager

Approved as to form:

City Attorney

EXHIBIT A

TERMS OF USE

1. All definitions set forth in the Usage Agreement are incorporated herein by reference.
2. The System Owners own Federal Communications Commission (FCC) license(s) that the System uses for its operation for site 1. Site 1 is defined as the original nine-site simulcast system. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide Sachse with any rights whatsoever to the System Owners' FCC license(s) or to the radio frequency spectrum used by the System.
3. The installation and maintenance of the System zone controller equipment is the responsibility of the System Owners unless otherwise stated in this Agreement.
4. The System Owners make no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. Sachse is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for Sachse's equipment.
5. In order to ensure hardware and software compatibility with the System infrastructure, all Subscriber radios and console(s) intended for use by Sachse on the System shall be compliant with Project 25 Phase 2 TDMA standards established by the Telecommunications Industry Association. The use of unauthorized radios on the System may result in suspended operation of the unauthorized radios, the Subscriber radios, and/or termination of this Agreement.
6. Antennas greater than 3dB will be not allowed for mobiles and consolettes. Power settings may not exceed 15 watts. Exceptions may be made upon approval of the System Owners.
7. The use of the System is for voice communications. The use of data shall be restricted and must be approved by the System Owners.

Applicable Fees

8. Sachse agrees to pay the System Owners a fee of Two Hundred Forty-Three and No/100 Dollars (\$243.00) per year for each authorized Talk Group and a fee of One Hundred Sixty-Eight and No/100 Dollars (\$168.00) per year for each of Sachse's Subscriber radios. Payment of the initial sum shall be calculated on a pro rata basis from the Effective Date through September 30, 2019. Payment of the initial sum under this Agreement is due on the Effective Date. Thereafter, payment shall be due on or before the first day of October of each year of this Agreement. System Owners may adjust the annual fees based on an estimation of its variable costs, such as maintenance and operating expenses. System

Owners agree to notify Sachse one hundred and twenty (120) days prior to the effective date of the fee adjustment. All payments made by Sachse pursuant to this Agreement must be made from current revenues available to Sachse.

9. Sachse agrees to pay the System Owners a one-time fee of One Hundred and No/100 Dollars (\$100.00) for each Subscriber radio added to the System. This fee covers the administrative duties of the System zone controller and the initial programming of the new Subscriber. This fee shall be paid when Sachse requests the new Subscribers be added to the System.
10. Sachse agrees to pay the System Owners a one-time fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each console position added to the System. This fee covers the administrative fees and console programming of the zone controller only. Sachse must provide the System Owners the console design parameters, Motorola equipment list and installation services for review. This fee shall be paid when Sachse requests System Owners program the console to be added to the System.
11. All payments to System Owners under this Agreement must be made payable to Garland, which shall hold such payments in trust for the benefit of the System Owners.
12. The System Owners authorize Sachse the use of eight (8) Talk Groups and up to two hundred (200) Subscriber radios on the System.
13. Sachse agrees to maintain a Motorola ASTRO 25 System Upgrade Agreement II (SUA II) for all fixed network equipment. In the event the SUA II is not maintained, the System Owners will notify Sachse that the fixed network equipment will be disconnected from the zone controller. Sachse shall be responsible for the loss of functional when disconnected from the zone controller.
14. Sachse shall retain a maintenance agreement on Subscriber radios, consoles and other fixed network equipment.
15. The use of telephone interconnect is not authorized.
16. Due to radio infrastructure resource allocations required by the "Private Call" function, Sachse shall not utilize "Private Call" on the System.
17. Patching shall be done only as necessary for a specific event or emergency. Should continuous patching to other systems or agencies become necessary, Sachse shall obtain prior written approval from the Governance Board described in the Garland/Mesquite Radio System ILA, a copy of which has been provided to Sachse.
18. System Priorities. The Parties agree that priority of radio transmissions on the System shall be as follows (from highest to least priority):
 - a. Emergency Activation

- b. Police/Fire
- c. General Government

It is Sachse's responsibility to provide the System Owners a list identifying which Subscriber radios fall within each of these categories.