

RURAL BROADBAND DEVELOPMENT OPPORTUNITY FUND AUCTION
CONSORTIUM AGREEMENT BETWEEN

CIRCLE GX NEVADA, MD INC.

AND

COGENT COMMUNICATIONS HOLDINGS, INC.

THIS RURAL DEVELOPMENT OPORTUNITY FUND AUCTION STRATEGC PARTNERSHIP CONSORTIUM AGREEMENT (this "Agreement"), effective as of the 13TH DAY OF JULY, 2020 ("Effective Date"), is by and among *Circle Gx Nevada MD Inc.* and Assigns with a mailing address at *2300 McDermott Drive Suite 200-177, 75025 Plano, Texas 75025* (hereinafter collectively referred to as "CGX"); and COGENT COMMUNICATIONS HOLDINGS, INC. , 2450 NORTH STREET, NW, WASHINGTON, ("COGENT"). Collectively together with CGX and COGENT being hereinafter sometimes referred to as "each party" or collectively as the "parties", as the context so dictates.

CGX and the COGENT herein are the "Parties" and each a "Party".

RECITALS

Whereas CGX owns and operates a 5G evolved packet core and intends to own and operate a Radio Access Network (the "Radio Network" or the "Project") in the territories that may be awarded to it under the RURAL DIGITAL OPPORTUNITY FUND AUCTION SCHEDULED FOR OCTOBER 29,2020. (the "Territory") and thereon provides or intends to provide 5G broadband network infrastructure to residents and businesses in the Territory;

Whereas the 5G broadband network will include 5G broadband access services including Voice over IP, IPTV, Video Streaming, Fintech and mobile data services through a point to multi-point 5G broadband network infrastructure;

Whereas CGX will offer above the minimum standards required by the Federal Communications Commission ("FCC") of 50 Mbps download speeds and 10 Mbps upload speeds to the registered users that subscribe or are otherwise enrolled in the Territory, meeting the minimum coverages required under auction rules. (the "Users");

Whereas CGX is committed to rural and urban education security and telehealth security providing lifeline services to the unserved and underserved via the Universal Service Fund "Lifeline Program" to all qualified persons;

Whereas, COGENT, is an established and certified Eligible Telecommunications Carrier under Section 214 (e) of the Communications Act of 1934, as amended (the "Act") , or will agree to be so certified within 180 days after being announced the winning bidder with substantial financial, technical, and other resources to assist CGX t o qualify to participate in the Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020 (the "Auction");

Whereas CGX has offered COGENT a strategic partnership for backhaul in all States CGX operates the 5G Infrastructure constituting monthly revenue support from the FCC, in consideration of COGENT lending its Form 477 FCC Filings for CGX to qualify to participate in the Auction by providing audited financials for three (3) years, and other legal, technical, and financial qualifications as specified under 47 C.F.R. §§ 1.21001 and 54.804,;

Whereas, this assistance includes under the terms of this Agreement to join with CGX in the FCC form 183 short form to qualify to participate in the auction, (Exhibit "B"); and the FCC Form 683 (Exhibit "C" long form from which the FCC will review to determine if CGX and its consortium under this Agreement qualifies for financial support should it become the winning bidder.

Whereas COGENT is willing to assist with and promote the Radio Network as above described and CGX is willing to perform and set up the Project and deliver the Radio Network (as further defined below);

NOW, THEREFORE, for and in consideration of these premises and of the mutual terms and conditions contained herein, and intending to be legally bound, the parties hereto hereby covenant and agree as follows based on scope agreed to by the Parties below:

1. PROVISION OF SERVICES BY CGX

1.1 CGX shall provide to Territory all 5G infrastructure services required or useful in connection with the Project, including those listed in the **Exhibit A** attached hereto, to comply with the terms and conditions of this Agreement). Any software, hardware, contracts, arrangements or other goods and services required to be obtained by CGX to be able to provide the Services, shall be considered part of the Radio Network and will be arranged by CGX without any additional charge (the "Supplementary Matters"). The services will include, in addition to the Radio Network marketing, billing and collection services, including back office enabling services.

1.2 Reserved.

1.3 CGX will purchase backhaul from COGENT on all broadband services offered in territory at a reasonable rate to be determined and CGX will be responsible for any and all loan payments according the schedule to be set forth in **Exhibit D** attached hereto for any and all network building and construction cost.

1.4 Reserved.

1.5 Reserved.

2. PRICING, COLLECTION, REVENUE SHARE AND PAYMENT

2.1 PRICING. CGX shall determine the prices for which the Radio Network shall be offered to the End Users. The pricing will be aligned with capabilities to pay loans associated with building the infrastructure, and FCC guidelines to receive financial support in the Territory.

2.2 Collection of all revenues from the Users for the Broadband Services shall occur as follows:

- (a) All revenues shall be collected by means of cash, credit card, debit card or, especially in the case of governmental payments, other electronic forms of direct payment by the Registered Users, and/or governmental subdivisions involved with providing access to internet access in low-income communities, whereby CGX shall ensure that payment is secured prior to the Broadband Services being enabled.
 - (b) Reserved.
- (c) 2.3 CGX shall ensure that the merchant and other commercial agreements with all financial institutions and clearing houses shall direct payment of collected funds appropriately to secured CGX bank accounts.
- 2.4 Reserved
- 2.5 Reserved.
- 3. DURATION
- 3.1 This Agreement shall be effective from the date first above written and shall expire ONE-HUNDRED TWENTY (120) months from the Commencement Date.
- 3.2 Parties shall consult with each other at least one month prior to expiration of this Agreement as per Section 3.1 to discuss if they wish to continue this Agreement after its expiration and to then discuss financial terms of such continuation.
- 4. TERMINATION FOR CAUSE.
- 4.1 This Agreement may be terminated (such termination a "Termination for Cause"):

- (a) by either Party, upon ten {10} days prior written notice to the other Party, in the event that the other Party {i} ceases to function as a going concern, {ii} files a petition, voluntarily or involuntarily, under any state or federal bankruptcy or insolvency law, which petition has not been dismissed or set aside within sixty {60} days of its filing, or {iii} is declared bankrupt or obtained a moratorium of payments or other arranged for the benefit of its creditors in general;
 - (b) by either Party, without prior notice, in the event that the other Party has committed any act of fraud against it;

(c) by either Party in the event that the other Party breaches any material provision of this Agreement and fails to cure such breach within ten (10) days of its receipt of written notice of such breach, or if such breach is not reasonably curable within such period, if the breaching party fails to implement a mitigation plan reasonably acceptable to the non-breaching Party within ten (10) days of its receipt of notice of such breach, indicating that such breach will be cured within a period not to exceed 30 days;

5. EFFECT OF EXPIRATION OR TERMINATION.

Upon expiration or termination of this Agreement, the rights and obligations of the Parties shall be governed by Applicable Law (as defined below).

6. CONFIDENTIAL INFORMATION.

1. Except as otherwise expressly provided in this Agreement, each party agrees that (a) all information communicated to it by the other and identified at any time as confidential, whether before or after the date hereof; (b) all information identified at any time as confidential to which it has access in connection with this Agreement, whether before or after the date hereof, (c) CGX Technology as defined below in connection with trade secrets, (d) trade secrets provided by one party to the other hereunder and any information provided by one party to the other hereunder concerning CGX Technology with respect to products, processes, formulas, algorithms, designs, schematics, works of authorship, inventions (whether or not patentable or registerable under copyright, mask works or similar laws and whether or not reduced to practice), discoveries, concepts, ideas, improvements, techniques, methods, research, development and test results, specifications, data, know-how, software, code, programs, marketing plans and analyses, and business plans, (e) all information concerning COGENT's retail end users, including without limitation, identity, telephone number and other contact information, call history or other usage patterns, and (f) the terms of this Agreement (collectively, "Confidential Information"), will be used only for purposes of such party's performance under this Agreement. Each Party agrees to prevent the disclosure and protect confidentiality of the Confidential Information using the same means as it uses to protect its own confidential information, but in no event less than reasonable means. No such information will be disclosed by one Party without the prior written consent of the other Party; provided, however, that each may disclose the other Party's confidential information to those of its employees, agents or contractors who have a need to have access to such information in connection with their employment, so long as the disclosing Party advises each employee of the

confidentiality obligations set forth in this Section, and so long as the such agents or contractors agree to be bound by the confidentiality obligations set forth in this Section.

2. The foregoing will not prevent any Party from disclosing information that (i) is publicly known or becomes publicly known through no unauthorized act of that Party, (ii) is rightfully received from a third party or (iii) is independently developed without use of the other Party's Confidential Information. If Confidential Information is required to be disclosed pursuant to the valid requirement of a governmental authority, such Confidential Information may be disclosed pursuant to such requirement so long as the disclosing Party, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure.
3. Upon written request of either Party at the expiration or termination of this Agreement for any reason, all documented confidential information and all copies thereof of that Party will be returned to that Party or will be destroyed, with written certification thereof being given to the requesting party.
4. Each Party hereto acknowledges that breach of this Section would cause irreparable harm to the other Party for which monetary damages alone would be an inadequate remedy. For this reason, the Parties hereto agree that in the event of a breach or a threatened breach of this Section, the non-breaching Party shall be entitled to the entry, by a court of competent jurisdiction, of a temporary restraining order, injunction or similar relief, as well as reimbursement of reasonable attorneys' fees or other costs incurred in obtaining such relief. Nothing in this Section shall be construed as prohibiting either Party from pursuing other remedies available at law or in equity against the breaching party or any other person or entity.
7. PRESS RELEASES. Except as required by law, neither party will, without the prior written approval of the other party, issue any press release or other announcement concerning this Agreement or the parties' performance hereunder. Such approval shall not be unreasonably withheld.

8. INTENTIONALLY DELETED

9. OWNERSHIP.

1. Each party will retain all rights in any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date, or acquired or developed after the Effective Date without reference to or use of the intellectual property of the other party.
2. All right, title, and interest in and to all tangible work and work products developed or produced under this Agreement by CGX, whether
3. comprising data, computer programs, reports, documentation or other technical information, are owned by CGX; provided, however, that CGX does not obtain any ownership interest in and to any pre-existing materials of COGENT that are provided to CGX for use in performing the Services.
4. All software that is licensed by a party from a third-party vendor will be and remain the property of such vendor.
5. Nothing in this Agreement shall create in either party any rights in any trademark, trade name, service mark, insignia, symbol, identification and/or logotype of the other party. Before either party uses any such mark of the other party, it shall obtain the prior written consent of the other party.

10. LIMITATIONS ON LICENSE. COGENT shall provide, or cause to be provided to CGX, the right to access COGENT-owned software and software licensed to COGENT by a vendor if such access is reasonably required for CGX to perform CGX's duties hereunder, but for no other purpose. COGENT shall be responsible for obtaining any consents, licenses, or other rights necessary for CGX to perform the Services and for finding an alternative solution in the event a vendor refuses consent. CGX confirms that the only license it requires for the purposes of this Section 10 is a license from CBRS FCC public spectrum (which it has obtained).

11. LIMITATION OF WARRANTIES: EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, CGX DOES NOT WARRANT ANY CONNECTION TO, TRANSMISSION OVER, NOR RESULTS OF

USE OF, ANY NETWORK CONNECTION, SERVICE, EQUIPMENT OR FACILITIES PROVIDED UNDER THIS AGREEMENT. CGX FURTHER DISCLAIMS ALL OTHER WARRANTIES NOT SPECIFICALLY PROVIDED HEREIN, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. LIMITATION OF LIABILITIES. EXCEPT FOR THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES WHETHER OR NOT FORESEEABLE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR THE LOSS OF DATA, GOODWILL OR PROFITS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH LIABILITY.

13. WARRANTIES AND REPRESENTATIONS AND DISCLAIMER OF WARRANTIES:

13.1 MUTUAL REPRESENTATIONS AND WARRANTIES. Each party to this Agreement represents and warrants that: (i) it has all requisite power and authority to execute, deliver and perform its obligations hereunder; (ii) it shall avoid deceptive, misleading or unethical practices that could adversely affect the performance of the other party's obligations under this Agreement or damage the reputation of the other party; and (iii) it is not a party to any agreement with a third party, the performance of which is reasonably likely to affect adversely its ability or the ability of the other party to perform fully its respective obligations hereunder.

13.2 DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE, OF ANY INVENTION, SERVICE, SOFTWARE, HARDWARE OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT.

14. ASSIGNMENT. Neither of the parties may, without the other party's prior written consent, which consent shall not be unreasonably withheld, assign or transfer this Agreement, or any of its rights or obligations under this Agreement, to any person ("Assignee"), except that either party may assign this Agreement or its rights and

obligations hereunder (i) as part of a merger of the party or a sale of substantially all of the assets of the party or substantially all the assets relating to COGENT's business or CGX's business, respectively, (ii) to a successor in interest upon change of control or reorganization, or (iii) to a third party that controls, is controlled by, or is under common control with such party, unless such third party is a Direct Competitor of the other party; provided, however, that the Assignee agrees to fully perform and be bound by the provisions of this Agreement. For the purposes of this section, a "Direct Competitor" of the COGENT is any third party that engages in or is an affiliate of a third party that engages in the selling of pre-paid wireless airtime to consumers.

15. **CLAUSE HEADINGS** - The headings of the clauses in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

16. **INDEMNITY PROVISIONS.**

16.1. BY CGX. Subject to the terms of this Section 16, CGX will defend, indemnify and hold COGENT harmless from and against all claims, complaints, losses, costs and expenses (including attorneys' fees) asserted by third parties based upon a claim that the Services, deliverables or work product produced under this Agreement infringe any patent, copyright, trade secret, or other intellectual property right of a third party ("IP Claim"). The foregoing states CGX's entire liability and COGENT's sole and exclusive remedy for intellectual property rights infringement. In no event will CGX have any obligations under this Section 16.1 or any liability for any claim or action if the IP Claim is caused by, or results from: (1) COGENT's combination or use of the deliverable or work product with software, services, or products not developed or provided by CGX, (2) COGENT's failure to abide by all applicable laws, rules, regulations and orders that affect the deliverable or work product, or (3) any specifications, designs, plans or other documents or information provided by COGENT to CGX.

16.2. BY COGENT. Subject to the terms of this Section 16, COGENT will defend, indemnify, and hold CGX harmless from and against all claims, complaints, losses, costs and

expenses (including attorneys' fees) asserted by third parties based upon a claim that arises out of or in connection with COGENT's compliance or failure to comply with all applicable laws and regulations applicable to COGENT's business activities or operations.

16.3. INDEMNIFICATION PROCEDURES. An indemnified party under this Section 16 shall: (i) promptly notify the indemnifying party in writing of any action, suit or proceeding for which the indemnified party seeks indemnification from the other party; (ii) allow the indemnifying party sole control of the defense and settlement of such suit, action or proceeding; and (iii) provide the indemnifying party with all reasonable requested assistance, at the indemnifying party's reasonable expense, in connection with the indemnifying party's defense and settlement of such action, suit or proceeding.

17. KEY PERSONNEL AND VENDORS. CGX will notify COGENT promptly after it replaces, dismisses, or reassigns any agent or employee that interfaces directly with COGENT and has direct management responsibility for the Services provided hereunder, or any agent or employee that is a designated point of contact for COGENT. CGX will notify COGENT promptly after it replaces, dismisses, or reassigns any third-party vendor that provides substantial support for the Services provided hereunder.

18. GENERAL TERMS.

18.1. INDEPENDENT CONTRACTORS. The parties hereto are acting as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other as a result of this Agreement for any purpose. Except as otherwise expressly provided in this Agreement, this Agreement does not constitute either party as the agent or legal representative of the other party and does not create a partnership or joint venture between the parties. Except as otherwise expressly provided in this Agreement, neither party shall have any authority to act for the other party in any agency or other capacity, to make commitments of any kind for the account of, or on behalf of, the other party or to contract for or bind the other party in any

manner whatsoever. This Agreement confers no rights of any kind upon any third party.

18.2. **FORCE MAJEURE.** Neither party shall be liable for failure to fulfill its obligations hereunder if such failure is due to causes beyond its reasonable control, including, without limitation, actions or failures to act of the other party or any retail end user, acts of God, fire, catastrophe, governmental prohibitions or regulations, viruses which did not result from the negligent acts or omissions of such party, its employees or agents, national emergencies, insurrections, riots or wars, or strikes, lockouts, work stoppages or other labor difficulties. The time for any performance required hereunder shall be extended by the delay incurred as a result of such act of force majeure, and any party that is unable to perform as a result of such act of force majeure shall act with diligence to correct or mitigate such force majeure.

18.3. **DELAYS OR OMISSIONS.** No delay or omission to exercise any right, power or remedy accruing to a party under this Agreement shall impair any such right, power or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of either party of any breach or default under this Agreement, or any waiver on the part of either party of any provisions or conditions of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to a party, shall be cumulative and not alternative.

18.4. **BINDING AGREEMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder. No person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

18.5. COMPLIANCE WITH LAW. Each party is responsible for complying with all applicable rules, regulations, statutes, codes, ordinances, and other requirements, whether federal, state, local, foreign , or international, in connection with the matters contemplated by this Agreement to be performed by that party.

18.6. INSURANCE. Each party will, at its own expense, maintain insurance policies that cover the party's activities under this Agreement and the activities of the party's employees, agents and representatives, including, but not limited to, workers compensation insurance and comprehensive general liability , and errors and omissions liability. Upon the request of the other party, each party shall arrange for its insurer(s) to provide the requesting party with a certificate of insurance evidencing such coverage.

18.7. SEVERABILITY. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be construed so as to render it enforceable and effective to the maximum extent possible in order to effectuate the intention of this Agreement; and the validity , legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. If necessary to affect the intent of the parties, the parties will negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language which as closely as possible reflects the intent.

18.8. INSPECTION. Each of the parties shall maintain records containing information sufficient to verify the completeness and accuracy of its respective business activities that are directly related to this Agreement. Once every fiscal quarter, with no less than thirty (30) days prior writ ten notice, COGENT shall have the right to have an independent auditor examine certain books and records of the other party. The examination shall be conducted during regular business hours. The examination shall be reasonably limited in scope and duration to verify the completeness and accuracy of the other party's accounting of subscriber count, call volumes, or other data that dictate the payment obligations under this Agreement. In the event that the party conducting the audit establishes that an amount is payable (or a refund is due) to the party conducting the audit from the other party, such amount shall immediately be paid or refunded together with an amount equal

to the direct costs incurred as a result of the audit. From time to time, and acting reasonably,
technical or operational personnel employed or retained by COGENT may inspect CGX' operational and business records during regular business hours, in order to verify the achievement by CGX of the SLA called for hereunder.

18.9. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party or deemed to provide third parties with any remedy, claim, right of action, or other right.

19. NOTICES. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by certified or registered mail (return receipt requested), overnight express air courier, charges prepaid, or facsimile addressed as follows, and such notices will be deemed to be made when actually received:

If to CGX:

CGX, Inc.

325 North St. Paul Street #2750, Dallas, TX 75201 Attn: Kevin Wiley
Tel: 469-484-5000

Fax: 469-484 -5004

If to COGENT:

COGENT COMMUNICATIONS HOLDINGS, INC.
2450 NORTH STREET N.W.
WASHINGTON, D.C. 20037
(202) 295-4200
HTTP://WWW.COSENT.COM

20. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall be governed by and construed in accordance with the laws of Nevada (USA) ("Applicable Law"). Any dispute hereunder shall exclusively be settled by the courts of Nevada.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Circle GX

—

NEVADA, INC.

/S/ _____

COGENT COMMUNICATIONS HOLDINGS, INC.

/S/ _____

Exhibit A

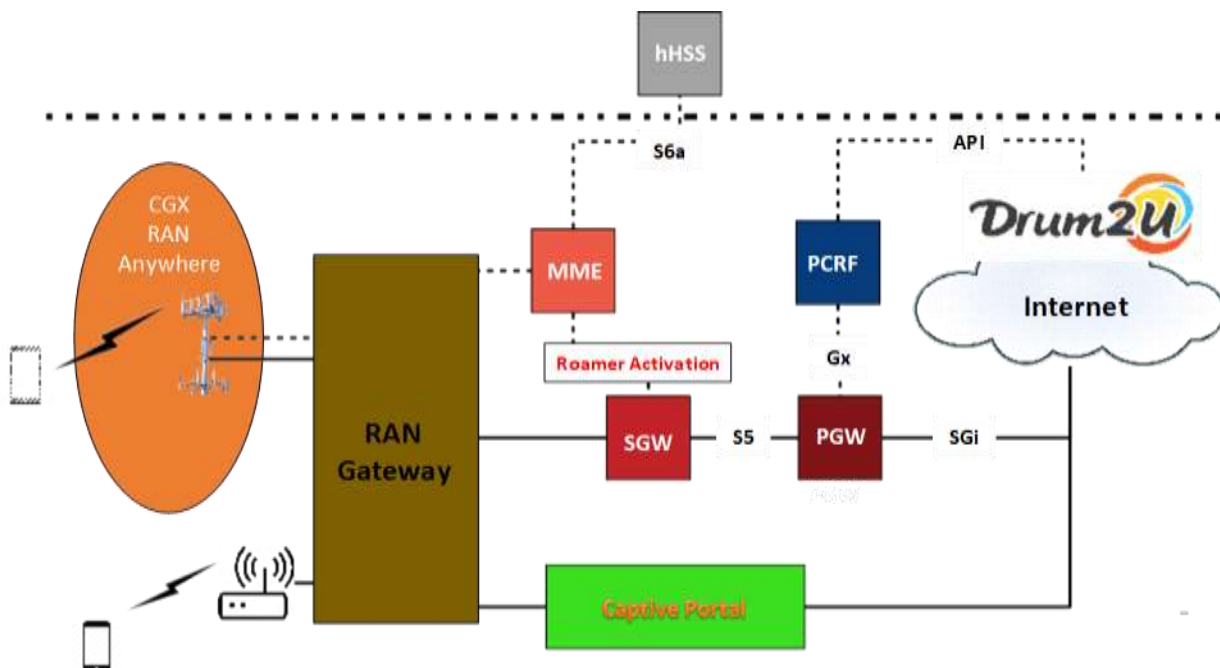
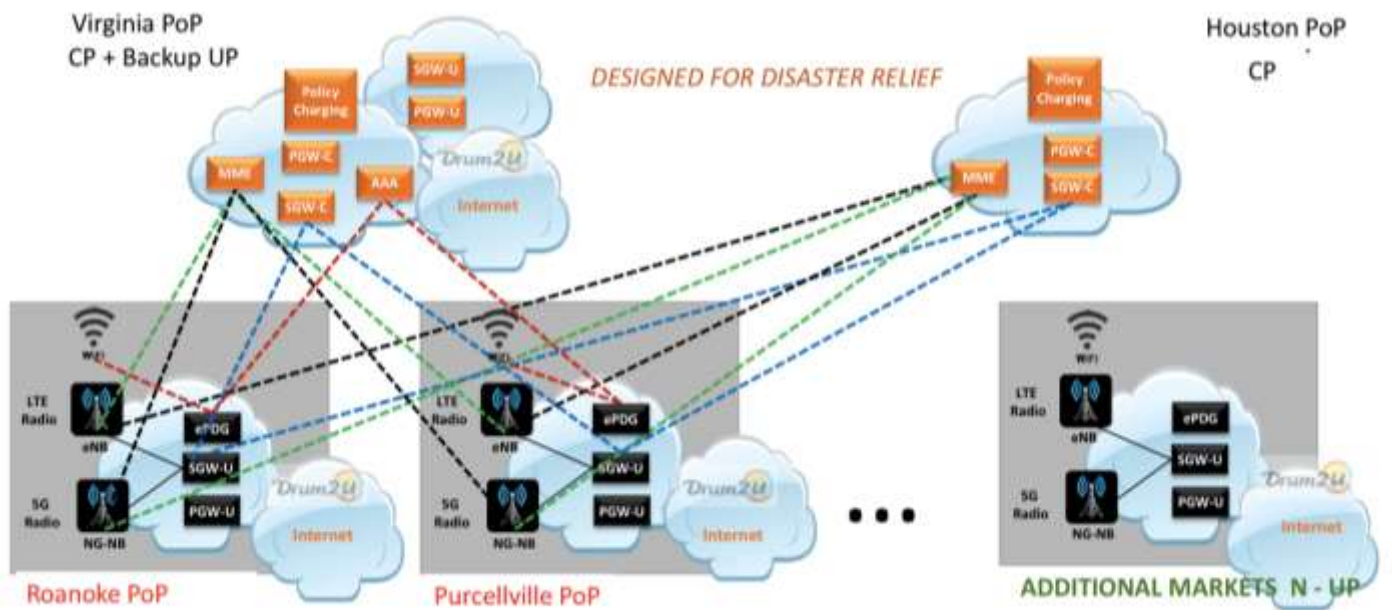


Exhibit B FCC FORM 183

Attached as separate form

Exhibit C FCC FORM 683

To be completed by the parties prior to the applicable deadline.

Exhibit D Loan Payment Schedule (“TBA”)