

CATHOLIC TELEVISION NETWORK
NATIONAL ITFS ASSOCIATION
WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.
CLEARWIRE CORPORATION
NEXTWAVE WIRELESS INC.
SPRINT NEXTEL CORPORATION
XANADOO, LLC

September 28, 2007

Via Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Notice of Written Ex Parte Communication

RE: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Education and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66; *Forty-One Late-Filed Applications for Renewal of Educational Broadband Service Stations, Memorandum Opinion and Order, DA 07-205*, File No. 0002525897 *et al.*; *Pending Applications For Reinstatement and Late-Renewal of Educational Broadband Service Licenses*, File Nos. listed on Attachment 1

Dear Ms. Dortch:

The undersigned parties, the Catholic Television Network, the National ITFS Association, The Wireless Communications Association International, Inc., Clearwire Corporation, NextWave Wireless Inc., Sprint Nextel Corporation and Xanadoo, LLC (collectively "Joint Commenters"), all of which have been, and continue to be, interested and active participants in the Commission's ongoing efforts to craft the most effective rules and policies for the 2.5 GHz band, hereby file this written *ex parte* letter in the above-captioned proceedings. This letter is precipitated by activity that has occurred before the Commission over the past eight months by members of the 2.5 GHz industry regarding late-filed applications for EBS license renewal, the impact such renewals may have on the Geographic Service Areas (GSAs) of nearby licensed stations, and the precedent such action may have on the future of the 2.5 GHz band.

Background and Purpose of this Letter

This issue first came to light earlier this year when the Commission ordered the grant of 41 unopposed late-filed EBS license renewals¹ and a subsequent petition for

¹ *Forty-One Late-Filed Applications for Renewal of Educational Broadband Service Stations, Memorandum Opinion and Order, DA 07-205* (rel. Jan. 25, 2007) [*"41 MO&O"*].

reconsideration of that action was filed.² Given the current planning and execution of the transition of the 2.5 GHz spectrum to a new band plan, the increasing build-out activity occurring at 2.5 GHz, and the future auction of unlicensed EBS spectrum, certainty surrounding GSA boundaries *is imperative* to enable EBS licensees, lessees, and operators to clearly identify their authorized service areas to facilitate the rapid deployment and operation of new broadband networks. Resolving this controversy should facilitate the 2.5 GHz industry to refocus its efforts on bringing the long-awaited benefits of 2.5 GHz advanced wireless broadband services to American consumers and educational and religious institutions.³

In light of the above, over the past several months, the Joint Commenters have been working together and with others in the industry in an attempt to reach a proposed resolution to some, if not all, of the issues surrounding late-filed EBS renewals. As a result of that collective effort, the Joint Commenters have come to agree that certain clarifications to determining GSA boundaries are necessary and desirable. To that end, consistent with the Commission's existing EBS licensing rules and policies, the Joint Commenters propose clarifications herein that they believe represent a consensus position of a majority of the 2.5 GHz industry. These further clarifications, similar to the clarifications the Commission adopted in its *2006 Order*⁴, are offered as those that, on balance, most effectively and fairly advance the Commission's 2.5 GHz band goals and objectives. Adoption of the proposals set forth in this letter should lead to resolution of Sprint Nextel's opposition to the renewals granted pursuant to the *41 MO&O* and should no longer require Sprint Nextel to oppose all late-filed renewal applications.

Current GSA Controversy

The current GSA boundary issue results from language contained in the following clarification point adopted by the Commission in its *2006 Order*:⁵

Where an incumbent station license *was in existence as of January 10, 2005* and caused a splitting of the football, and that incumbent station license is later forfeited, the reclaimed territory reverts to the BRS BTA holder (if BRS spectrum) or to EBS white space (if EBS spectrum) regardless of whether the

² See Petition for Reconsideration of Sprint Nextel Corporation, File Nos. 0002525897 *et al.* (filed Feb. 26, 2007) ("the Sprint/Nextel EBS Renewal Petition").

³ The longer this issue remains unresolved, the more pervasive and divisive it is becoming, perpetuating and exacerbating uncertainty for adjacent incumbent EBS licensees, lessees, and operators that are unable to plan deployment based on a reasonably certain GSA if a late-filed EBS renewal application overlapping their territory is pending and no consistent industry understanding as to how its GSA is determined exists.

⁴ See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, at ¶¶ 205-208 (2006) ["*EBS/BRS Second Report and Order*" or "*2006 Order*"].

⁵ See *EBS/BRS Second Report and Order* at ¶ 205. The other four clarification points are not in dispute and the Joint Commenters see no need for further clarification with regard to them.

action/inaction that caused the forfeiture occurred prior to January 10, 2005.
(emphasis added)

Specifically, it is now apparent that the 2.5 GHz industry interprets the phrase “in existence as of January 10, 2005” in substantially different ways for purposes of fixing GSAs as of the effective date of the Commission’s 2004 EBS/BRS R&O.⁶ Some maintain that if an EBS license actually expired before January 10, 2005 (and did not have a renewal application pending within 30 days of expiration), regardless of what the Commission’s ULS database states, that license is not considered “in existence” for purposes of GSA boundary determination as of the date GSA boundaries were fixed. Consequently, these entities claim that grant of late-filed EBS renewals that expired before January 10, 2005 cause harm to existing incumbent EBS licensees and operators through, *inter alia*, a loss of portions of their GSAs to those EBS licensees whose licenses are renewed. In contrast, others take an opposite view, interpreting the same phrase to mean that if the Commission’s ULS database did not reflect these stations as “cancelled” as of January 10, 2005 then the Commission intended that these stations be considered “in existence” for purposes of fixing GSAs. These entities maintain that grant of late-filed EBS renewals maintains the GSA *status quo* with respect to adjacent EBS licensees.

Proposed Clarification to Resolve the GSA Issue

Considering the disparate interpretations described above, in light of the significant planning and deployment activity that is occurring in this band, coupled with the now heightened awareness of the substantial number of EBS licenses that expired without timely renewal prior to January 10, 2005, the Joint Commenters believe that the interpretation of “in existence,” set forth below, best achieves the Commission’s goals and objectives for EBS spectrum and avoids further disruption of existing and currently planned broadband and educational operations at 2.5 GHz:

- If an EBS license term expired before January 10, 2005, it was not considered “in existence” and thus was not accorded a protected service area (“PSA”) used to split overlapping footprints (*i.e.*, other stations on the same channel(s) that had PSAs which would have overlapped the expired license would not take the expired license into account in determining their GSAs)⁷ *unless it has been renewed nunc pro tunc to date.*⁸

⁶ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) [“2004 BRS/EBS R&O”]

⁷ A license will have “expired” if the license expiration date in the Universal Licensing System (“ULS”) database correctly shows that it expired prior to January 10, 2005, without a renewal application having been filed by the later of January 10, 2005 or 30 days following expiration of the license. In other words, the *actual* expiration date of the license will control, irrespective of what the ULS shows or showed. An “expired” license will also include a license that was cancelled, forfeited, revoked or voluntarily returned to the FCC prior to January 10, 2005.

⁸ The late-filed EBS renewals that have been granted *nunc pro tunc* to date, including those late-filed EBS licenses granted pursuant to the 41 MO&O, were not opposed on any basis (including the impact on adjacent EBS licensee GSAs) at the time they were placed on public notice, and the Commission granted such renewals *nunc pro tunc*, thus putting the late-renewed EBS licensees in the same position they would have been in had they timely renewed. See 41 MO&O paras.4-8.

- If the FCC grants additional late-filed EBS license-renewal applications that expired before January 10, 2005, the renewed license will be accorded a GSA that does not include any overlapping PSA areas (i.e., the license will be reinstated but not *nunc pro tunc* for purposes of making it “in existence” as of January 10, 2005)⁹ except in cases of manifest Commission error where reinstatement is in the public interest.

The Joint Commenters respectfully request that the Commission adopt the above clarification either in the context of an order on reconsideration addressing the *41 MO&O* or in an order on reconsideration of the *EBS/BRS Second Report and Order* in Docket 03-66.

Sincerely,

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⁹ The Joint Commenters note that some late-filed EBS renewal applications already propose a similar resolution. See e.g., File Number 0002887478, “Supplement to Clarify and Correct Waiver Request and Renewal” for EBS Station WNC414 (Filed May 7, 2007) where the licensee, based on the circumstances surrounding its late-filed renewal, proposes a similar resolution.

Ms. Marlene H. Dortch

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cc: Attached Service List

ATTACHMENT 1

File Number	Licensee Name	Call Sign
0002525897	Albion Community Development Corporation, Inc. (ACDCI)	WLX583
0002882276	Armored School District #9	WLX617
0002661076	Bellville Independent School District (BISD)	WLX591
0002798102	Belt Public Schools (BPS)	WNC777
0002916231	Bethel Christian School	WLX997
0002916232	Bethel Christian School	WNC601
0002405095	Board of Cooperative Educational Services Sole Supervisory District (BCESSSD)	WNC699
0002916211	Boces Dist St. Lawrence & Lewis Co.	WHR698
0002916208	Boces Dist St. Lawrence & Lewis Co.	WHR699
0002916210	Boces Dist St. Lawrence & Lewis Co.	WHR700
0002916209	Boces Dist St. Lawrence & Lewis Co.	WHR701
0002191529	Bowling Green (F) Wireless Cable Partnership (BGWCP)	WMX650
0002191534	Bowling Green (F) Wireless Cable Partnership (BGWCP)	WMX675
0002040428	Bowling Green School (BGS)	WLX656
0002882798	Bowling Green State University	WHR617
0002752589	Burke Co Middle School (BCMS)	WNC452
0002772351	Calhoun County Board of Education (CCBE)	WNC669
0002881247	Champlain College	WLX556
0002881248	Champlain College	WLX598
0002881249	Champlain College	WLX638
0002881246	Champlain College	WLX639
0002881250	Champlain College	WLX722
0002881245	Champlain College	WLX786
0002390634	Charlton County High (CCH)	WLX680
0002743204	Chattanooga State Tech. Comm. College (CSTCC)	WHR684
0002401076	Christus St. Michael Health System (CSMHS)	WNC510
0002348398	City University (CU)	WNC422
0002916225	Charlotte High School	WNC461
0002916226	Charlotte Independent School District	WNC462
0002922392	Clark County R-I School District	WNC380
0002916221	Clarks School District #11	WNC474
0002649451	College of the Redwoods (CR)	WNC737
0002922383	Colorado Independent School District	WNC536
0002029671	Connecticut Public Broadcasting, Inc. (CPBI)	WHR804
0002882573	Cooter Reorganized School District R-IV	WNC201
0002409152	Danbury Independent School District (DISD)	WLX751
0002887707	Dothan City Board of Education	WNC692
0002371426	Eudora Unified School District #491 (EUSD)	WLX327

File Number	Licensee Name	Call Sign
0002132509	Franklin County Board of Education (FCBE)	WNC563
0002752204	Freed-Hardeman University (FHU)	WLX819
0002915945	Glascocock County Schools	WLX852
0002911844	Greene County Hospital	WNC372
0002398240	Haskell Community College (HaCC)	WNC697
0002392799	Heartland Community College (HeCC)	WLX983
0002033797	Herrington U.S.D. #487 (HUSD)	WNC323
0002880049	Hondo Independent School District	WNC325
0002887610	Houston Academy	WNC535
0002872230	John L. Coble Elementary School	WNC665
0002867623	JRZ Associates	WNTH835
0002898733	Liberty University	WHR507
0002752193	Lambuth University (LU)	WLX818
0002840558	Linden City Board of Education (LCBOE)	WNC329
0002841453	Linn County R-I Public School	WLX865
0002498505	Marais Des Cygnes Valley US Dist. 456 (MDCV)	WLX331
0002926903	Marion-Florence USD #408	WNC376
0002884328	Monforton School	WNC736
0002871886	National College	WNC760
0002543875	New Mexico Tech (NMT)	WNC413
0002708426	North American Catholic Educational Programming Foundation Inc (NACEPFI)	WLX992
0002303150	Northwestern State University of Louisiana (NSUL)	WNC626
0002880402	Norwich University	WLX459
0002880399	Norwich University	WLX480
0002880400	Norwich University	WLX577
0002880397	Norwich University	WLX635
0002880398	Norwich University	WLX721
0002880403	Norwich University	WLX809
0002880401	Norwich University	WLX810
0002224027	Ouachita Academy of Arts and Science (OAAS)	WNC534
0002360151	Pearsall Independent School District (PISD)	WNC382
0002916222	Polk-Hordville School District	WLX679
0002390659	Putnam County School District (PCSD)	WLX443
0002390660	Putnam County School District (PCSD)	WLX242
0002880360	Saint Michael's College	WLX631
0002880361	Saint Michael's College	WLX640
0002880363	Saint Michael's College	WLX705
0002880364	Saint Michael's College	WLX706
0002880358	Saint Michael's College	WLX729
0002880362	Saint Michael's College	WLX933
0002880359	Saint Michael's College	WLX936
0002672561	Santa Fe Community College (SFCC)	WNC636
0002887517	Seventh Day Adventist School	WNC211

File Number	Licensee Name	Call Sign
0002882270	South Pemiscot District R-V	WLX618
0002837842	Sumter County Board of Education (SCBOE)	WNC332
0002290900	St. Vincent Health Care (SVHC)	WHR682
0002402289	Silver Lake Unified School District #372 (SLUSD)	WLX904
0002923574	Sweet Briar Institute/College	WNC586
0002397772	Texarkana College (TC)	WNC590
0002884194	Texas State Technical College-Sweetwater	WLX928
0002733724	The College of Santa Fe (CSF)	WNC687
0002742547	The School Board of Miami-Dade County Florida (SBMDCF)	KTB85
0002260812	Unified School District #410 (USD 410)	WNC334
0002831316	Wahpeton School District	WNC573
0002887478	West Georgia Resa	WNC414
0002091389	Wrens Middle School (WMS)	WLX862
20031128AA	Lois Hubbard	WMI307
0002972895	Utopia Independent School District	WLX968
0002970196	George C. Wallace State Community College	WNC752
0002992519	Peabody-Burns USD #398	WNC333
0002997985	Robert C. Hatch High School	WNC392
0003016691	Independent School District #789	WHB842
0003016714	Independent School District #790	WHG355
0003016723	Independent School District #790	WHR730
0003016707	Independent School District #709	WHR731
0003025633	University of Massachusetts, Dartmouth	WHR833
0003028734	Southeastern Massachusetts University	WHR833
0003025641	University of Massachusetts, Dartmouth	WOG94
0003028735	Southeastern Massachusetts University	WOG94
0003022184	Hempstead Independent School District	WLX645
0003046960	Giles County Board of Education	WNC209
0003049193	Victory Christian Academy	WNC712
0002945440	Holton Unified School District	WLX329
0002936004	Santa Fe Trail USD #434	WLX330
0002935983	Glynn County School System	WLX623
0002945525	Mayetta Unified School District #337	WLX340
0003058323	Lawrence County Board of Education	WNC210
0002935982	Glynn County School System	WNC289
0002926914	Shelby School District #32	WNC480
0002926906	Aquinas High School	WNC477
0003058949	University of North Alabama	WNC713
0002935508	Cavalier Public School District #6	WNC551
20021231AAB	Oklahoma Western Telephone Co.	WLK382
20021231AAC	Oklahoma Western Telephone Co.	WNTC500
20021231AAD	Oklahoma Western Telephone Co.	WNTC664
20021231AAE	Oklahoma Western Telephone Co.	WNTD797

File Number	Licensee Name	Call Sign
0003081986 0003176993	Swanville Public Schools	WLX472
0003155286 0003139917	Cook County Schools	WLX597
0003155330 0003141205	Elizabeth High School	WLX633
0003174574 0003160180	Turner Independent School District	WLX858
0003176461 0003160176	Revere C-3 Community School	WLX995
0003176302	Coastal Bend College	WNC819
0003171370	North Florida MMDS Partnership	WNTF688
0003171076	Bonnie D. O'Connell	WMY295
0003171011	East Otero R-1 School District	WNC839
0003155485	The University of South Florida	KD54001
0003065753 0003144217	Lane College	WLX817
0003014539 0003138474	West Central Illinois Ed Telecom Corp	WLX262
0003024448 0003140584	Oakdale High School	WLX675
0003025746 0003140839	Sesser-Valier Community Unit #196	WLX707
0003155320 0003141197	Bibb County High School	WNC395
0003023901	The Curators of the University of Missouri	WLX343
0003033014	Burlington College	WLX608
0003033016	Burlington College	WLX609
0003135661 0003033023	Burlington College	WLX627
0003135666 0003033034	Burlington College	WLX629
0003135658 0003033046	Burlington College	WNC404
0003120458	Independent School District #786	WHB843
0003120418	Wayne County Board of Education	WNC327
0003120431	Shelby County C-1 Schools	WNC412
0003110091 0002998115	Canton R-V School District	WNC221
0003110088 0002998080	Francis Marion High School	WNC394
0003110093 0002998097	Stromsburg School District #10	WNC482

File Number	Licensee Name	Call Sign
0003110090 0002998122	Hermleigh Independent School Dist	WNC541
0003019492 0003102484	Foreign Language and Culture FD	WNC655
0003019503 0003102489	Foreign Language and Culture FD	WNC641
0003119706	Archdiocese of Hartford Diocesan School Office	WHR893
0003058036	Wilcox County Board of Education	WNC420
0003072546	Florida Community College Jacksonville	WHA933
0003072987	Hubbard Hospital	WLX708
0003140264	International Business College NM Inc.	WNC337
0003072978	Meharry Medical College	WLX939
0003049166	Oak Forest Academy	WLX665
0003008820	Rockne Educational Television	WNC514
0003155292 0003141047	Trenton Special School District	WLX621
0003082029	Tri County R-VII Schools	WLX985
0003115869	Utica College of Syracuse University	WNC675
0003155315 0003141201	West Blocton High School	WNC391
0003065791	Carrollton Farmers Branch Independent School District	WNC900
0003114992	Dallas-Fort Worth Hospital	WND242
0003133914	Grace Lutheran School	WNC774
0002931054	Lawrence County Board of Education	WNC488
0003131192	Mary Immaculate Star of the Sea School	WNC797
0003100391	Mendocino Lake Community College District	WNC913
0003065283	Minford Local School District	WNC975
0003163338	McCurtain County Higher Education Program	WNC972
0003065287	New Boston Local School District	WNC976
0002971419	Otero Junior College	WNC838
0003073152	Riverview School District	WND584
0002932643	Webster Parish School Board d/b/a Springhill High School	WND507
0002970382	Texas State Technical College	WNC805
0003069895	Veblen School District	WNC878

Certificate of Service

I hereby certify that on this 28th day of September, 2007, I caused a true and correct copy of the foregoing Letter to be served by, unless otherwise noted, depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed as follows:

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PO Box 480609
Linden, AL 36748

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Melvern, KS 66510
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Socorro, NM 87801
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Monroe, LA 71201
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Pearsall Independent School District
522 East Florida Street
Pearsall, TX 78061-9999
ATTN Richard Joyer

Putnam County School District
200 S. 7th Street
Palatka, FL 32177
ATTN George Williams

Santa Fe Community College
6401 Richards Avenue
Santa Fe, NM 87508-4887
ATTN: Barton Bond

Sumter County Board Of Education
P.O. Box 10
Livingston, AL 35470

St. Vincent Health Care
PO Box 35200
1233 N 30th Street
Billings, MT 59107
ATTN: Al Rooney

Silver Lake Unified School District #372
200 Rice Road, Box 39
Silver Lake, KS 66539
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2500 N. Robison Road
Texarkana, TX 75599
ATTN: Mr Frank Coleman, President

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1600 St. Michaels Drive
Santa Fe, NM 87505
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The School Board Of Miami-Dade County
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Unified School District #410
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Hillsboro, KS 67063
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1001 Peachtree Street
Louisville, GA 30434
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Canton, NY 13617
ATTN: Steve Fenton

Champlain College
163 South Willard Street
Burlington, VT 05402
ATTN: Paul Dusini

Charlotte High School
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Armored School District #9
#7 South Main Street
Armored, AR 72310
ATTN: Michael Hunter, Superintendent

Landmark Baptist Church, Receiver for
Bethel Christian School
ATTN: Dennis McKinley
509 N. 8th Street
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Clark County R-I School District
427 W. Chestnut Street
Kahoa, MO 63445
ATTN Superintendent

High Plains Community Schools
260 South Pine, Box 29
Polk, NE 68654
ATTN Superintendent

Colorado Independent School District
534 East 11th Street
Colorado City, TX 79512
ATTN Superintendent

Cooter Reorganized School District R-IV
Highway E
Cooter, MO 63839
ATTN William Crowder

Dothan City Board of Education
500 Dusy Street
Dothan, AL 36301
ATTN Mike Manuel

Glascocock County Schools
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738 Railroad Ave.
Gibson, GA 30810
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Greene County Hospital
509 Wilson Avenue
Eutaw, AL 35462

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Demopolis, AL 36732
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Hondo Independent School District
2604 Avenue E
Hondo, TX 78861
ATTN Clyde Parsons, Superintendent

Houston Academy
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Dothan, AL 36303
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450 Academy Drive SW
Calhoun, GA 30701
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Bozeman, MT 59718
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5301 S Highway 16, Suite 200
Rapid City, SD 57701
ATTN Dr Samuel Kerr

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155 Harmon Drive
Northfield, VT 05663
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Saint Michaels College
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PO Box D
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Utopia Independent School District
258 School Street, P.O. Drawer 880
Utopia, TX 78884
ATTN: John Walts, Superintendent

Robert C. Hatch High School
P.O. Box 900
Marion, AL 36756
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PO Box 219
101 W Main St
Mayetta, KS 66509

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Brunswick, GA 31520
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3420 MN, P.O. Box 149
David City, NE 68632
ATTN: Father Brian Connor

Cavalier Public School District #6
P.O. Box N
Cavalier, ND 58220
ATTN: Francis A Schill

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602 Degraf Street
Swanville, MN 56382
ATTN Gene Harthan

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Pulaski, TN 38478
ATTN: Director of Schools

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Holton, KS 66436

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Shelby, NE 68662
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University of North Alabama
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Cook County Schools
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Elizabeth High School
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District No. I-5, Star Route 73
Burneyville, OK 73430
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Revere C-3 Community School
One Bulldog Drive
Revere, MO 63465
ATTN Ryan Horner

Coastal Bend College
3800 Charco Road
Beeville, TX 78102
ATTN Dr. Thomas Baynum

North Florida MMDS Partnership
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Gulfport, FL 33707

Bonnie D. O'Connell
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Sesser-Valier Community Unit #196
4626 State Highway 154
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Burlington College
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Independent School District #786
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Bertha, MN 56437
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Wayne County Board of Education
419 South Main Street
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Shelby County C-1 Schools
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Shelbyville, MO 63469-2225
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Canton R-V School District
200 S. Fourth Street
Canton, MO 63435

Francis Marion High School
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Marion, AL 36756
ATTN Superintendent

Stromsburg School District #10
401 East 4th Street
Stromsburg, NE 68666

Hermleigh Independent School District
1026 School Avenue
Hermleigh, TX 79526
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ATTN Kathleen Simcox

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650 E. Montana Suite F
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1005 Todd Blvd.
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Oak Forest Academy
600 Walnut Street
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Rockne Educational Television
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201 W. 10th Street
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Jamesport, MO 64648

Utica College of Syracuse University
Burrstone Road
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West Blocton High School
100 School Street
West Blocton, AL 35184

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