

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
Greenbelt Division**

BLOOSURF, LLC.

Plaintiff,

v.

Civil Action No.: 8:24-cv-1047

T-MOBILE USA, INC.

Serve:

Corporations Service Company
251 Little Falls Drive
Wilmington, DE 19808

and

TDI ACQUISITION SUB, LLC

Serve:

Corporations Service Company
251 Little Falls Drive
Wilmington, DE 19808

Defendants.

COMPLAINT

COMES NOW Plaintiff BLOOSURF, LLC (hereafter “Plaintiff” or “Bloosurf”), by counsel, who state the following as its complaint against Defendants, T-MOBILE USA, INC. and TDI ACQUISITION SUB, LLC (collectively, “T-Mobile”):

PARTIES

1. Bloosurf is a Delaware limited liability company with its principal place of business at 1222 Old Ocean City Rd, Salisbury, MD 21804.

2. Defendant T-Mobile USA, Inc. is a Delaware corporation with its principal place of business at 12920 SE 38th Street, Bellevue, WA 98006. It is a national telecommunications provider with substantial business in the State of Maryland.

3. Defendant TDI Acquisition Sub (“TDI”) is a Delaware limited liability company that is a wholly owned subsidiary of TMO. It is used by T-Mobile to bid on and own spectrum licenses in the State of Maryland. Its principal place of business is 6200 Spring Parkway, Overland Park, KS 66251.

VENUE AND JURISDICTION

4. This Court has personal jurisdiction over T-Mobile because it regularly engages in business within and thus substantial contracts with Maryland, sufficient to confer jurisdiction under the Md. Courts Jud. Pro. Code Ann. § 6-103.

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the value of \$75,000 and the controversy arises between citizens of different states. The value of the damages sought amounts to \$116 million.

6. Bloosurf, LLC, is a limited liability company incorporated in Delaware with none of its members being a citizen of Delaware.¹ A limited liability company is assigned the citizenship of its members. *Cent. W. Va. Energy Co. v. Mt. State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011) (citing *Gen. Tech. Applications, Inc. v. Exro Ltda*, 388 F.3d 114, 121 (4th Cir. 2004)).

7. This court is the proper venue under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this judicial district. For example, T-Mobile’s interference with Bloosurf’s business, explained *infra*, has mostly occurred within the boundaries of this judicial district.

¹ For the purposes of diversity of citizenship, the members of Bloosurf LLC are, (1) Pocomoke Holdings, LLC; (2) Naimat Mughal (citizen of Virginia); and (3) Neil Stegman Revocable Trust (Sean Martin McDonald as a trustee) (citizen of the District of Columbia), holding shares in trust. The members of Pocomoke Holdings, LLC. are (1) Groupe Alsatis, a corporation (citizen of France); (2) The Paul R. Carliner 2009 Irrevocable Trust (Andrew Hirsch as a trustee) (citizen of Virginia); and (3) Robbie and Vincent Sabathier, (citizens of Virginia).

STATEMENT OF FACTS

Bloosurf Obtains Lease for Use of EBS Broadband Licenses

8. Incorporated in 2009, Bloosurf is a provider of integrated internet and telephone services² (and associated 911 services), which is located at 1222 Old Ocean City Road, Salisbury, MD 21804, USA. Specifically, Bloosurf provides high speed internet to businesses and residents in rural areas on the Delmarva peninsula in Maryland, Delaware, and Virginia.

9. The Educational Broadband Service (“EBS”) spectrum is a range of frequencies within the 2.5 GHz band that was specially designated by the Federal Communications Commission (“FCC”) for educational purposes by educational institutions.

10. The University of Maryland Eastern Shore (“UMES”), Salisbury University, and Wor-Wic Community College (collectively, the “Universities”) hold FCC issued licenses giving exclusive use to allotted frequencies (the “EBS Licenses”).

11. Around 2009-2010, the Universities were at risk of losing their Educational Broadband Service (“EBS”) licenses because FCC regulations required EBS license holders with underutilized frequencies to either show that they were building out infrastructure or were providing minimal educational services by May 1, 2011.

12. Faced with this deadline, UMES offered to lease its EBS Licenses to Bloosurf in order to preserve its hold on its frequencies.

13. When Bloosurf won a competitive award from the Dept of Agriculture under the Broadband Infrastructures program to deploy and operate for 10 years a wireless broadband system, Salisbury University and Wor-Wic Community College decided to join under the auspices

² Bloosurf provides “Voice Over Internet Protocol” (“VOIP”) services – a means by which customers may use telephone services through Bloosurf’s internet broadband network. Most importantly, with this VOIP service, customers are more readily connected to local 911 services. This is an essential condition of its CAF 2 contract with the FCC, explained *infra*.

of the UMES Agreement, to negotiate a collective lease agreement for all three of their EBS licenses.

14. Bloosurf's intent in obtaining the frequencies was to use them to provide services within the region. In September 2010, Bloosurf had won a \$3.2 million grant and loan from the United States Department of Agriculture ("USDA") Rural Utilities Service to provide coverage to under-served areas of Maryland's Eastern Shore.

15. In addition to using the spectrum to cover under-served areas, Bloosurf planned to provide broadband coverage to the Universities themselves (at a reduced cost) to fulfill the Universities' FCC educational service requirements.

16. Against this backdrop, the parties collectively agreed on January 4, 2011, to a "Long Term De Facto Lease" of the EBS Licenses to Bloosurf ("the EBS Lease Agreement"). *See Exh. A.* Under this arrangement, Bloosurf leased the EBS Licenses from the Universities under certain specified terms.

17. The commencement of the EBS Lease Agreement officially began "on the date of issuance by the FCC of a public notice announcing the grant of the last FCC Long Term Lease Application [...] filed by the parties." (*See* clause 1(a) of the EBS Lease Agreement, **Exh. A**).

18. Upon entering the EBS Lease Agreement, Bloosurf sought and obtained the FCC Licenses representing the Universities' EBS spectrum for a three-year period, thus triggering the start date for the EBS Lease Agreement.

19. To wit, the FCC authorized the Universities' lease (a) on March 9, 2011, for UMES's license; (b) on March 11, 2011, for Salisbury University's license, and (c) April 13, 2011, for Wor-Wic Community College's license. *See Exh. B.*

20. The FCC issued the official public notice for the final grant, the lease application for Wor-Wic's license, on April 13, 2011. See **Exh. C**.

21. As such, the commencement date for the EBS Lease Agreement was **April 13, 2011** (the "Commencement Date"), as that was the "date of issuance" of "the public notice announcing the grant of the last FCC Long Term Lease Application ... filed by the parties."

FCC Licenses Renew in 2014; Lease Rolls Over in 2021

22. The EBS Lease Agreement's "initial term" period ran for ten (10) years from the Commencement Date of April 5, 2011. See **Exh. A** clause 1(a).

23. By comparison, the FCC's certification for the Universities lease agreement with Bloosurf initially only ran for three (3) years for each of the EBS licenses, i.e. from 2011 to 2014. See **Exhs. B and C**.

24. The licenses were subsequently renewed for ten years: until September 7, 2024, for the licenses held by the UMES and Salisbury University, and until October 12, 2024, for the license held by Wor-Wic Community College.³

25. Ten years after the Commencement Date of the EBS Lease Agreement on April 6, 2021, Bloosurf and the Universities renewed the Lease through their mutual conduct.⁴

26. As a result, the parties entered the second term of the EBS Lease Agreement, which is now extended through April 5, 2031.

³ The EBS licenses must be renewed every ten years. The Universities have not reapplied for their licenses expiring in September 2024.

⁴ In Maryland, parties may modify or change terms of the contracts by implication and circumstances found from circumstances and conduct of the parties that show acquiescence or an agreement. *Walker v. Walker*, 2022 Md. App. LEXIS 92, *9 (2022)(citing *Cole v. Wilbanks*, 226 Md. 34, 38, 171 A.2d 711 (1961)).

27. The parties' relationship is expected to last thirty (30) years— or until April 2041 — under the EBS Lease Agreement.

28. Meanwhile, the three EBS licenses provide for a 67.5MHz range within the EBS spectrum extending for a radius of 35 miles from and around Salisbury, hence from Accomack County, Virginia (in the south) to Kent County, Delaware (in the north).

**Bloosurf Provides Services Across Delmarva
Using the EBS Licenses and Grows in Value**

29. Bloosurf operates twenty “4G-LTE”⁵ sites running on the EBS spectrum in Delmarva peninsula (6 sites in Delaware, 13 sites in Maryland, and one site in Virginia), which offer high-speed internet through its fixed wireless access (“FWA”) design.⁶

30. Bloosurf's spectrum covers more than 150,000 physical locations and, prior to the interference explained *infra*, served more than 1,200 households.⁷

31. It currently serves around 600 households, a significant reduction which has occurred for the reasons described herein.

⁵ 4G LTE refers to a certain type of cellular signal under the “Long Term Evolution” fourth generation of network technology set by the International Telecommunications Unit in 2008. 4G is the general standard of signal emitted for telecommunications services and refers to radio waves emitting frequencies below 6GHz transmitted from traditional cell towers.

⁶ Bloosurf was one of the first in the nation to use EBS frequencies for a FWA network. FWA uses wireless communication devices to transmit internet data between two stationary points instead of using a physical internet cable. While this approach offers coverage not supported by a cable network, it is sensitivity to frequency “pollution”, i.e. interference. Since Bloosurf's role out in 2011, many telecom providers have adopted this model.

⁷ The potential user population is 10,000 households, representing 27,000 people in the states of Delaware, Maryland, and Virginia.

32. Since entering into the Lease Agreement, Bloosurf has successfully received several state and federal government grants and contracts based on the use of Bloosurf's EBS spectrum, expanding the use of the spectrum from solely residential to commercial uses, with a focus on low-cost, high-speed internet to rural and low incomes households.

33. These grants and contracts included:

- (a) In 2010, a grant/loan of \$3.2 million through the USDA Rural Utilities Services, Broadband Infrastructure Program⁸;
- (b) In 2017, a grant of \$100,000 to pilot the State of Delaware's 4G Fixed Wireless Access network from a Delaware state tower in the city of Seaford;
- (c) In 2018, a grant from the FCC of approx. \$5.5 million from the FCC's "Connect America Fund Phase 2" ("CAF 2") for 10 years;
- (d) In 2019, a contract with the State of Delaware to provide wireless internet services in Kent and Sussex County for a span of 7 years; and
- (e) Various work orders from the State of Delaware to accelerate Bloosurf's deployment in order to increase at-home connectivity for public school students during the COVID-19 pandemic. By October 2020, Delaware was financing the installation of up to two hundred and fifty (250) households a month – all of which became eligible customers to Bloosurf. *See Exh. D.*

34. By December 1, 2020, Bloosurf serviced over 1,200 discrete customers on the Eastern Shore of Virginia and Maryland, as well as in Delaware. Ninety per cent (90%) were rural households, with the remainder being farms and rural businesses.

⁸ This was granted while Bloosurf was still negotiation the Lease Agreement with the Universities.

T-Mobile’s Acquisition of Sprint

35. T-Mobile, Inc. is a global internet and telecommunications provider and a dominant presence in the digital-telecommunication market throughout the world.

36. It also has FCC licenses which allow it to transmit in the Delmarva region to serve its national wireless network. For years, it has sought to expand its operation, especially in the realm of FWA.

37. In April 2020, T-Mobile acquired Sprint Corporations (“Sprint”), a national telecommunications company.

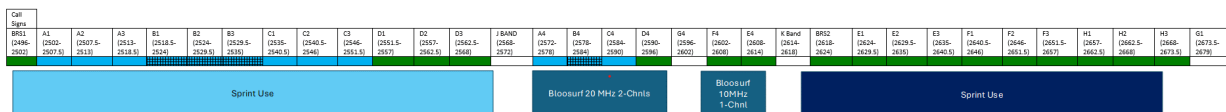
38. Prior to its acquisition, Sprint held licenses to the frequencies bordering Bloosurf’s EBS spectrum in the Delmarva region.⁹

39. In 2015, Sprint had entered an agreement with Bloosurf whereby the two companies would transmit their respective signals within the same “Subframe” (explained *infra*) to prevent interference between neighboring towers.

40. When T-Mobile acquired Sprint (which then became its subsidiary TDI), it acquired the Sprint frequency bands, bordering Bloosurf’s service territory, as well as Sprint’s employees and equipment.

41. T-Mobile also acquired, from Sprint, narrow “middle” frequency bands *between* Bloosurf’s EBS bands. Given the proximity to Bloosurf’s frequencies, the use of these narrow

⁹ This diagram represents Bloosurf’s neighborly relationship with Sprint. The EBS licenses allowed Bloosurf to broadcast within frequencies covered by the middle two of the four large boxes represented below. Sprint’s frequencies are the two boxes on each end of Bloosurf’s coverage.



bands cannot be maximized by T-Mobile without obtaining exclusive rights to the EBS spectrum (which, of course, was held by Bloosurf). Otherwise, transmitting on these frequencies risked “bleed over” into frequencies that Bloosurf has the exclusive right to broadcast on.

42. As result, these narrow middle frequency bands are difficult to use without interfering with Bloosurf’s frequencies.

43. Indeed, this was a problem Sprint had faced as well. In 2016 and 2017, Sprint had attempted to negotiate a spectrum swap with Bloosurf, to salvage the unused frequencies. Sprint’s offered price was too low, and Bloosurf instead decided to utilize its EBS spectrum to bid in the FCC CAF 2 tender, which it won in 2018. Explained, *supra*.

44. In sum, the EBS Licenses leased by Bloosurf represent key frequency bands which are an obstacle to T-Mobile’s strategy to comprehensively cover the Delmarva region with its 4G and 5G Network.¹⁰

45. Having acquired Sprint in April 2020 and inherited its institutional knowledge, T-Mobile was well aware from 2020 going forward that (i) its frequency bands bordered upon, and its service area overlapped with Bloosurf’s and (ii) that any actions it took vis-à-vis transmission would have an outsized impact on its rival provider on the Eastern Shore.

¹⁰ The Eastern Shore, which includes eastern Virginia, eastern Maryland and southern Delaware, has a permanent population of approximately 500,000 but that population swells in the summertime to approximately 1 million due to the number of people visiting the beaches which face the Atlantic Ocean. As a result, this summertime traffic exponentially drives up the value of the service.

**Mysterious Interference with Bloosurf's transmission
on its EBS frequencies Begins in late 2020.**

46. In late 2020, Bloosurf began to receive complaints from its Eastern Shore customers about slow output and/or disconnection from the internet distributed through its EBS network. As a result, Bloosurf's customers began terminating their accounts *en masse*.

47. At that time (and for over a year going forward), Bloosurf worked to rectify the interference but could obtain no knowledge of what was causing the interference.

48. In December 2020, Bloosurf began to measure the interference through its spectrum analyzer, showing persistent interference all over its EBS network.

49. On or around January 22, 2021, knowing that T-Mobile owned the neighboring towers and frequencies, Bloosurf alerted T-Mobile's engineering team about the interference and sought their cooperation to find the source.

50. At the time and as explain *infra*, T-Mobile was transmitting in a manner that invaded on frequencies that Bloosurf has the exclusive right to broadcast on. It was aware of that fact and yet failed to disclose it.

51. Instead, T-Mobile responded on January 25, 2021, by offering to run tests on two of its towers without disclosing their location. Bloosurf agreed to the tests. Those tests were not made in good faith and were intended to dissuade Bloosurf from understanding the true source of the interference.

52. Unbeknownst to Bloosurf, on approximately December 29, 2020, T-Mobile began updating its broadcast towers to transmit on new 5G equipment, at least, in the Cordova, MD region; in addition to committing other acts of interference. See **Exh. E**, pp. 10.

53. At this time, T-Mobile, in possession of Sprint’s institutional knowledge, knew that this 5G deployment (and the other acts) would interfere with on-going transmissions by Bloosurf that utilized Bloosurf’s existing EBS spectrum.

54. As explained *infra*, this ongoing interference would lead to a multiplicity of problems with Bloosurf’s service which would take months, then years, to discover.

55. Regardless, the new 5G transmission was not disclosed in January 2021, which meant that the “joint testing” was programmed to deceive Bloosurf – and did deceive Bloosurf into thinking that T-Mobile was not the source of the interference on its network when in fact it was (and T-Mobile knew it).

56. During this testing, T-Mobile did not disclose that it was broadcasting 5G from these towers nor did it notify the FCC or Bloosurf that its 4G transmissions have been modified to operate on a configuration incompatible with Bloosurf’s known broadcasts, special subframe 7.

**During Joint Testing, T-Mobile Conceals 5G Transmission;
Testing in Surrounding Area Reveals One Cause of Interference**

57. Between February 4 and 8, 2021, T-Mobile ran the ill-fated joint tests with Bloosurf. As part of those tests, T-Mobile allegedly “turned off” the signal from two of its towers within the Bloosurf’s EBS coverage area to see whether Bloosurf’s signal improved.

58. It did not. (Because T-Mobile did not turn off the 5G signal).

59. Unable to find the interference on its own, Bloosurf then engaged the FCC’s Enforcement Bureau in early 2021 to investigate the interference. Due to COVID protocols then in force, however, the FCC’s investigation of the interference was conducted off-site, with no significant on-location oversight of its tests. During these remote tests, the source of the interference continued to elude Bloosurf.

60. In May 2021, the FCC, at the request of a U.S. Congresswoman from Delaware (which was relying on Bloosurf for its rural broadband services), began a more thorough investigation into the cause of the interference and deployed its enforcement bureau to conduct on-site tests.

61. As part of the May 2021 investigation, the FCC identified a T-Mobile tower within Bloosurf's coverage area that was not disclosed or tested during the previous (February 2021) tests between the two companies. *See Exh. E.* pp. 17.

62. The FCC then requested T-Mobile to allow a further supervised, on-site test on that tower, which was located in Seaford, DE ("the Seaford Site").

63. On or around May 28, 2021, after conducting an on-site test of T-Mobile's Seaford Site tower, the FCC concluded that the interference with Bloosurf's signal *was caused* by T-Mobile. *See Exh. E.*, pp. 15–16.

64. To wit, the FCC found that T-Mobile had been transmitting outside of its allotted frequency band.¹¹ This excess bandwidth bled over into Bloosurf's frequency range and disrupted its coverage.¹² Additionally, T-Mobile's 4G transmission was too "loud" by twenty (20) decibels, which cause further interference.

65. This transmission by T-Mobile, which had institutional knowledge of the ongoing operations on the Eastern Shore when it purchased Sprint, was made with the full knowledge that

¹¹ The FCC identified the frequencies T-Mobile was supposed to be broadcasting at was between 2553.4 MHz to 2567.3 MHz – a 15MHz space to operate in. The FCC concluded after its tests, that T-Mobile was operating within a wider 17.4 MHz space, trespassing a whole 2.4 MHz's worth into Bloosurf's EBS frequency band.

¹² Bloosurf believes that **both** this unauthorized 4G transmission, as well as the 5G transmissions on a different frame configuration mentioned throughout this complaint, caused the interference with its service.

these transmissions would bleed over and interfere with Bloosurf's signal. Yet it continued these transmissions with full knowledge they would cause such interference.

66. In response, the FCC ordered T-Mobile to (i) audit its towers that neighbored Bloosurf's coverage area regarding its transmission frequency and (ii) report its findings to FCC officials. Bloosurf and T-Mobile were encouraged to continue tests. *See Exh. E*, pp. 16.

67. After the Seaford Site transmission was corrected, Bloosurf reported *some minor* improvements in the spring and summer of 2021, but that there was still interference that impeded the distribution of its broadband services. The problem was not solved, and so the FCC investigation continued.

**The FCC finds the Cordova site and the Lexington site;
5G problems enter the fray.**

68. On July 1, 2021, as part of the second phase of its investigation, the FCC noticed a powerful 5G signal operating in Cordova, MD ("the Cordova site") which was near five (5) of Bloosurf's transmitting towers.

69. 5G NR and 4G-LTE have well documented co-existence issues.

70. The same day, the FCC asked T-Mobile whether that signal belonged to it.

71. T-Mobile finally conceded that it was the source of the 5G transmission at Cordova. It also admitted it had been transmitting 5G since December 29, 2020, and 4G LTE since January 5, 2021, from the Cordova site. *See Exh. E*, pp. 10–13.

72. In its response, T-Mobile told the FCC that it had previously tested the Cordova site and concluded that it was not the cause of the Bloosurf interference.

73. However, T-Mobile did not indicate in its writing whether its 4G, 5G, or both transmissions were turned off during that test. *See Exh. E*, pp. 10–11.

74. To date, there is no indication that T-Mobile ever turned off its 5G transmissions **during any of its tests** with Bloosurf and the FCC. In fact, it is certain that 5G transmission from T-Mobile's neighboring towers (at least the Cordova site) served as a material source of interference with Bloosurf's network and T-Mobile failed to disclose that.

75. On August 17, 2021, as part of the third phase of its investigation, the FCC also identified T-Mobile's Lexington, MD site ("the Lexington site") as *another* potential cause for interference with Bloosurf's service.

76. On August 26, 2021, FCC and T-Mobile conducted a test at the Lexington site and found no diminution in the interference. Again, T-Mobile did not specify whether 5G transmissions were turned off during this test. *See Exh. E*, pp. 1–4.

77. Indeed, like the Cordova site, it is certain that T-Mobile did not turn off its 5G transmission during the Lexington test, which meant that once again T-Mobile did not candidly disclose the source of the interference to the FCC.

78. In reality, T-Mobile's transmission of 5G from the Lexington site was another competent producing cause of the interference with Bloosurf's transmissions.

T-Mobile knowingly interfered with Bloosurf's 4G transmission

79. As stated above, it is well documented amongst FCC license holders that 5G has co-existence issues with 4G-LTE technology if not broadcast on a highly synchronized configuration incompatible with other transmissions in the area.

80. Prior to and during the course of the FCC's investigations in the source of Bloosurf's interference troubles, T-Mobile knew that its 5G rollout would interfere with pre-existing 4G coverage within the surrounding region.

81. Because of its purchase of Sprint, T-Mobile possessed the institutional knowledge of Sprint regarding transmission and operations on the Eastern Shore as well as knowledge of Sprint's interactions with Bloosurf, both in a business sense and their respective transmission interactions.

82. T-Mobile's predecessor Sprint had agreed with Bloosurf that the two companies would transmit their respective signals on the Eastern Shore on the same "subframe" configurations.¹³ This is an ordinary practice within the industry to prevent carriers with overlapping regions from interfering with each other.

83. In this case, Bloosurf and Sprint had agreed to use "subframe 2".

84. As part of its tender offer to the FCC's CAF 2 contract, Bloosurf relied on the agreement to operate on subframe 2 and its current un-interfered operation on "special subframe 2" and worked it into the successful CAF 2 proposal, specifically because this configuration granted its towers the range to cover the required geographic area necessary to meet CAF 2's specifications.

85. When it acquired Sprint in 2020 and its engineers (through TDI), T-Mobile inherited knowledge of this "subframe 2" arrangement with Bloosurf.

86. Specifically, Sprint, and by association T-Mobile, were aware of Bloosurf's 4G transmission on subframe 2.

87. It is a well-established industry standard to collaborate with other service providers to insure that transmissions do not interfere with each other.

¹³ These configurations synchronize the timing of neighboring towers' uplinking and downlinking with their customers' devices. Towers out of synch with one another interfere with each other's connectivity.

88. In preparation for its 5G rollout in late 2020, T-Mobile *changed* its neighboring towers' 4G configuration to "special subframe 7". See **Exh. E** pp. 7–8.

89. It is documented that only "special subframe 7" enables 4G to co-exist with 5G.

90. T-Mobile knew at the time that any broadcasts on Subframe 2 that were operating on any special subframe other than special subframe 7 would be degraded and made this change in order to avoid interference on its own network without regard for other operations nearby on subframe 2.

91. In other words, T-Mobile changed its special Subframe in order for its own 4G network not to be degraded by its new 5G transmission.

92. However, it put the 4G/5G transmission on a collision course with Bloosurf's existing 4G service, which was still operating under "special subframe 2."

93. Special Subframe 2 broadcasts a slightly weaker signal over a 16km area while Special Subframe 7 broadcasts a stronger signal over a 10km area. See Telrad Letter, attached as Exhibit F.

94. At the time T-Mobile's transmissions were transitioned to "Special Subframe 7", **T-Mobile knew** that their 5G transmissions would interfere with the existing "Special Subframe 2" transmissions, such as their prior transmissions and Bloosurf's current transmissions, on neighboring towers.

95. Moreover, T-Mobile made this change (i) without consulting Bloosurf or notifying Bloosurf of this change and (ii) with full knowledge that Bloosurf's 4G network (on subframe 2) would suffer from T-Mobile's new 5G transmission if it was broadcast on special subframe 2. In deploying the 5G network, making a configuration change, failing to notice Bloosurf and then concealing the source of the interference, T-Mobile interfered with its business relationships.

The Interference Summarized

96. In sum, T-Mobile interfered with Bloosurf's interference in three ways *inter alia*: (1) transmitting outside the permitted spectrum so that its transmission would "bleed over" into Bloosurf's signal; (2) transmitting its 4G frequencies at too high a decibel; and (3) transmitting 5G signals within Bloosurf's geographic coverage area with full knowledge it would interfere with Bloosurf's existing 4G coverage.

97. T-Mobile exacerbated the problem by deploying its 5G network without any notice to Bloosurf.

98. The totality of these acts caused Bloosurf's service to collapse in the last part of 2020 and first half of 2021, without any knowledge as to "what" was causing the disruption.

99. During the FCC investigations, T-Mobile knew of its various towers interfering with Bloosurf's operation. During this time, T-Mobile concealed the extent and the specific nature of its interference with Bloosurf.

100. T-Mobile did so with full knowledge of the interference that its transmissions had on Bloosurf's transmissions in the Eastern Shore.

101. Regardless, the 5G interference, whether from the Seaford site, the Cordova site, the Lexington site, or another site on the Eastern Shore (not yet revealed), has had disastrous effects on Bloosurf's customer-facing business that T-Mobile has refused to remedy.

102. This interference is ongoing today and, upon information and belief, is still emanating from T-Mobile's various neighboring towers which are transmitting 5G.

103. As stated, Bloosurf's EBS frequencies represent an important slice of the FCC's entire EBS spectrum in the Eastern Shore.

104. By interfering with its coverage, T-Mobile attempted to eliminate Bloosurf as a rival in the broadband market on the Eastern Shore, thus freeing up Bloosurf's EBS frequencies for lease or auction and claiming a wider hold on the region's spectrum.

105. T-Mobile has not *only* resorted to physical interference with Bloosurf's broadband spectrum broadcast.

106. T-Mobile has also interfered with the EBS Lease Agreement between Bloosurf and the Universities in order to neutralize Bloosurf's business and neuter potential interference claims.

**T-Mobile Seeks to Purchase Bloosurf's EBS Spectrum
and Demands Bloosurf's Acquiescence**

107. As stated *supra*, Bloosurf began its Lease in 2011 for a ten-year term; that Lease then automatically renewed in 2021 due to the parties' mutual conduct.

108. While the outside interference was occurring in 2021, Bloosurf was speaking with the Universities regarding the status of the Lease and the underlying licenses.

109. On June 7, 2021, Bloosurf was in contact with the lawyer representing the UMES, Steven Coran ("Mr. Coran") regarding its intention to "extend" the Lease Agreement, whether by the parties' agreement or by FCC acknowledgement.¹⁴

110. In the alternative, Bloosurf sought to buy outright the EBS Spectrum, which it was solely using at that time.

¹⁴ While the Lease Agreement had moved into its second term in 2021, the parties had also discussed 2024 as representing the final year of the Lease Agreement's first terms – in any event, the Universities' cooperation was required to renew the FCC acknowledgements of such licenses 2024.

111. In July 2021, Bloosurf submitted an offer to Mr. Coran in line with the price it paid for the Citizens Broadband Radio Service spectrum it had acquired a year before.¹⁵ No response was immediately given, and for months afterwards,

112. In response, Mr. Coran informed Bloosurf in the summer of 2021 that the Universities needed time to consider their options.

113. In fact, no response was ever provided by the Universities regarding the extension of the Lease or the purchase of the EBS licenses.

114. Instead, on January 27, 2022, Bloosurf received a joint letter from the Universities asking Bloosurf to consent to the Universities' sale of their EBS Licenses (and concomitant assignment of their rights under the EBS Lease) to TDI, a subsidiary used by T-Mobile to acquire new frequencies.¹⁶ See **Exh. G**. (“the Proposed Assignment”).

115. Pursuant to Section 7 of the Lease Agreement (“Section 7”), Bloosurf has the right to reasonably withhold its consent of any such assignment.

116. Since January 2022, Bloosurf has exercised its Section 7 right – i.e., refusing to consent to the Proposed Assignment – due to the impact such a change would have on its business and its negative history with T-Mobile, which would become its new lessor.¹⁷

117. For example, Bloosurf currently holds the ten-year \$5.5 million CAF 2 contract from the FCC to provide broadband service to rural customers. As discussed, *supra*. An assignment

¹⁵ Notably, this spectrum was in the same service territory, thus giving Bloosurf a backup option if the Universities chose not to renew the Lease or otherwise assign the Leases. It is a less powerful license.

¹⁶ TDI is a pass-through entity that was originally owned by Sprint Corporation and then transferred to T-Mobile during the merger in 2020.

¹⁷ Any such transfer of an EBS License would need to be approved by the FCC, pursuant to the FCC Regulations as well as the terms of the Lease Agreement.

of its rights under the Lease Agreement would terminate service under this contract and place Bloosurf in default with the United States Government.

118. Notably, the Proposed Assignment in January 2022 asked Bloosurf to not just approve the assignment but acquiesce to the EBS transfer before the FCC,¹⁸ an obligation outside of the Lease Agreement and contrary to Bloosurf's position that T-Mobile/TDI is a monopoly provider in the EBS Spectrum Band.

119. Bloosurf has refused that request to silence its voice before the FCC. (Notably, the FCC's investigation into the unwarranted interference from T-Mobile was still actively underway when this request was made).

The Role of T-Mobile (TDI) and Effect on the Universities

120. Upon information and belief, the Proposed Assignment was drafted by TDI (i.e., T-Mobile) with the intent of "buying out" any legal liability to Bloosurf and silencing its voice before the FCC. More critically the entire effort has chilled Bloosurf's relationship with the Universities and placed its EBS Licenses in peril.

121. Now, as a result of the efforts of TDI and T-Mobile, the Universities have ceased all interest in continuing their relationship with Bloosurf. To date, they have refused to notify the FCC of their intention to renew the EBS Lease Agreement – a plain violation of the Lease

¹⁸ *"Bloosurf agrees to not object to interfere with or delay the FCC's consent" to TDI's purchase of the EBS spectrum from the Universities."*

terms.¹⁹²⁰ This has left Bloosurf in an untenable position, as a lessee with an active customer base with no guaranteed broadband spectrum going forward.

122. Meanwhile, Bloosurf's customer base has been completely devastated by the 5G interference issue, which is still not resolved.

123. As a direct result of these two events, the value of Bloosurf as a business has been substantially damaged.

**Bloosurf's Public Information Request
and the Universities' Notice of Default**

124. In November 2022, Bloosurf, through its attorneys, sent requests for information under the Maryland Public Information Act ("MPIA") to each of the Universities seeking details surrounding the Proposed Assignment of the EBS Licenses.

125. Salisbury University responded to the requests on January 20, 2023.

126. Salisbury University's disclosures showed:

- (a) that T-Mobile and the Universities had been negotiating a transfer of the EBS licenses **since September 2021** or earlier.²¹ See **Exh. H**, pp. 1.;
- (b) that **a draft** of the Proposed Assignment was provided to Mr. Coran by an attorney for T-Mobile on November 29, 2021;

¹⁹ Clause 1(c) of the Lease Agreement states, the "*Licensee and Bloosurf will cooperate to timely file a renewal application for each License, in conjunction with a request for an extension of the then-applicable Initial Term or Renewal Term, to the date that is ten (10) years from the beginning of such Initial Term or Renewal Term.*" (**Exh. A.**)

²⁰ Clause 6(a) of the state Lease Agreement states "[...] [t]he Parties further covenant and agree to include in any renewal application for the Licenses, or separately request, as necessary, a request to extend and renew this Agreement for the renewal term of the Licenses, if this Agreement contemplates renewal of this Agreement for or during any part of the renewal term for such Licenses."

²¹ Although TDI was the official party listed on the Purchase Agreement, T-Mobile was the negotiator, primarily through James Goldstein, located in the Northern Virginia office.

- (c) that between November 2021 and December 2021, edits of the draft Proposed Agreement were exchanged between the Universities and T-Mobile and certain language was selected because “[T-Mobile] [was] **trying to be fairly subtle.**” *See Exh. H*, pp. 4–5; 8;
- (d) that in November-December 2021, T-Mobile and TDI decided to enter the Proposed Agreement with the Universities first, then seek Bloosurf’s consent after. *See Exh. H*, pp. 4;
- (e) that between December 2021 and January 2022, T-Mobile (through TDI) and the Universities entered a purchase agreement for TDI to take over all of the EBS spectrum;²² *See Exh. I*; and
- (f) that after the Universities presented Bloosurf with the Proposed Assignment in January 2022, T-Mobile regularly requested updates on Bloosurf’s consent over the next few months. *See Exh. H*, pp. 10–13.

127. The MPIA response confirmed that T-Mobile was aware of Bloosurf’s deployment obligations to the United States Government and various state agencies, as well as the interference issues. *See Exh. H*, pp. 13. Yet it pressed ahead to take over the licenses.

128. Upon receiving the MPIA requests and faced with Bloosurf’s refusal to acquiesce in its own demise, the Universities issued a “Notice of Default” to Bloosurf on November 17, 2022, alleging that its failure to agree to the Proposed Assignment was a breach of the EBS Lease Agreement. *See Exh. J* (“Notice of Default”).

²² Each University had a separate EBS license, although all three negotiated together with TMO for purposes of selling the EBS license.

129. In fact, T-Mobile and Coran conditioned any further discussions on the interference issue on Bloosurf's acquiescence to the transfer. *See Exh H* pp. 14.

130. The Notice of Default demanded that either Bloosurf consent to the Proposed Assignment or the Universities would terminate the Lease Agreement on the grounds that the refusal to consent was a "material breach."

131. To date, Bloosurf has refused to consent to the Proposed Assignment; meanwhile the Universities have refused to extend their own EBS Licenses which are due to lapse in 2024.

132. At the present date, T-Mobile and the Universities have not consummated their sales agreement – but T-Mobile (and TDI) has successfully prevented Bloosurf from consolidating its leasehold status, e.g. by convincing the Universities to not renew the FCC's acknowledgment of the EBS Lease and accompanying license.

133. Without this renewal, the business of Bloosurf – and its ability to retain its customer base (which was already challenged in 2021) – will be fatally compromised.

Bloosurf's Loss of Business Value

134. At the time of the interference in 2021, Bloosurf was valued at \$30 million by KPMG ("the KPMG Report"). *See Exh. K*.

135. The KPMG Report was based on the nature of the broadband industry and other factors unique to Bloosurf:

- (i) In 2020 Bloosurf had finished deploying a brand new 4G LTE network that was capable of servicing more than 10,000 customers.
- (ii) Bloosurf had a perfect track record in fulfilling its obligations under its state grants and awards. The Chairman of the FCC personally congratulated Bloosurf on its performance. *See Exh. L*.

(iii) Bloosurf, at the prompting of KPMG who offered its services to help Bloosurf grow, planned to diversify its network through “Fiber to the Home” as well as broadband, particularly in the State of Maryland, which had budgeted more than \$200 million for fiber projects in 2021-2023 inclusive.

(iv) Bloosurf was in pole position to win these fiber projects in 2021-2023 because of its strong track record, local government support, and relationship with the FCC.

136. Instead, Bloosurf has been unable to grow in the broadband market for the past three years.

137. Rather, it has lost half its customers and suffered a significant loss of gross (and net) revenues and cashflows.

138. Further, its attempts to hold on to its customer base and EBS Lease Agreement status – amidst T-Mobile interference -- have consumed all aspects of its business operations, making fund-raising or expansion impossible.

Summary of Case

139. The summary of the above facts is that (i) T-Mobile substantially damaged Bloosurf’s business during the last part of 2020 and all of 2021, when it deployed a 5G network which directly interfered with Bloosurf’s expanding rural customer base, and (ii), once that misconduct was discovered, T-Mobile sought to “cover up” this event by buying out the EBS spectrum in the fall of 2021, through its use of TDI.

140. Based on the 2021 KPMG report, Bloosurf’s projected earnings before interest, taxes, depreciation, and amortization (“EBITDA”) for 2023 were **\$7,285,969**, assuming no outside interference.

141. Based on special multipliers unique to telecom companies during this time (2021-2023), Bloosurf could have counted on its market value being worth sixteen (16x) times its EBITDA value in 2023. *See Exh. M.*

142. Accordingly, the projected 2023 valuation of Bloosurf's business was sixteen times **\$7,285,969** for a total of **\$116,575,504**.

143. Presently, as a result of T-Mobile's wanton and willful interference with Bloosurf's business operations and broadcast transmissions, that valuation has diminished to a *de minimis* amount.

144. Therefore, Bloosurf's loss of business value due to T-Mobile's various interferences from 2021 until today is **\$116,575,504**.

145. The actions by T-Mobile herein have been willful and wanton and done with the specific intent of destroying the business of Bloosurf. Alternatively, they have been done purposefully, recklessly and with conscious disregard for the rights of Bloosurf.

COUNT I – Willful and Wanton Interference
Violation of 47 U.S.C. § 333
(Against T-Mobile and TDI)

146. Plaintiffs incorporate by reference all the allegations previously stated herein.

147. T-Mobile is a Common Carrier pursuant to 47 U.S.C. § 201 *et. seq.*

148. As such, it has a duty to conduct its practices in a manner that is not unjust, unreasonable, or *de facto* unlawful.

149. This includes the duty to not interfere intentionally with the broadcast of other broadband providers through radio waves or otherwise.

150. 47 U.S.C. § 333 states that “No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.”

151. The FCC has interpreted this to include wireless signals and broadband distribution. *See Johnson v. Am. Towers, LLC*, 781 F.3d 693 (4th Cir. 2015).

152. T-Mobile intentionally interfered with Bloosurf's EBS spectrum through the deployment of its unauthorized 4G transmissions and interfering 5G transmissions.

153. T-Mobile knew that from 2011 to the present that Bloosurf has had the *exclusive* rights to broadcast in its allotted EBS frequency band. Yet, T-Mobile chose to broadcast, unapproved, within Bloosurf's band anyway.

154. T-Mobile's 4G transmission, *at least* from its Seaford site, trespassed a whole 2.4 MHz within Bloosurf's EBS frequency range over a period of months if not years, causing severe interference and disconnection within Bloosurf's cell tower network.

155. T-Mobile's 4G transmission, *at least* from its Seaford site, was broadcasting at 20 decibels too high, further drowning out similar Bloosurf 4G signals in the area, causing severe interference and disconnection within Bloosurf's cell tower network.

156. T-Mobile (through its acquisition of Sprint) had knowledge of Bloosurf's business and its business relations on the Eastern Shore. Indeed, the parties had coordinated their broadcasting on a specific Subframe per informal agreement since at least 2015, to prevent interference. This is a known industry standard.

157. T-Mobile knew in 2020 and going forward that Bloosurf was broadcasting on a "Subframe 2" configuration for its wireless internet coverage.

158. This previous agreement was meant to deter interference between Bloosurf and Sprint's own respective transmissions as per well-established industry practices.

159. Knowing that “special subframe 7” configuration mitigated interference between 4G and 5G transmission, T-Mobile calibrated its devices accordingly to avoid interference *within its own network, i.e. on its own towers*.

160. However, the deployment of 5G led to an unavoidable conflict with Bloosurf’s 4G network which operated on an configuration incompatible with 5G Technology.

161. T-Mobile moved forward with this deployment despite full knowledge of the substantial interference it would create to Bloosurf’s transmission.

162. T-Mobile neglected to inform Bloosurf of its 5G transmission deployment and configuration shift, both before deploying its 5G network and during various interference tests. As a result, the FCC was not able to understand the source of the Interferences.

163. T-Mobile had no right or justifiable cause to cause such interference and damage to Bloosurf from the deployment of 5G.

164. T-Mobile’s 5G rollout was willfully calculated to interfere with Bloosurf’s coverage or at least done with reckless disregard to its effect on same.

165. During tests conducted with Bloosurf and the FCC, T-Mobile failed to act in good faith, concealing various towers, and potential sources of its interference.

166. As a result of this ongoing interference, from late 2020 to the present, Bloosurf’s customers have been terminating their accounts at a rate as high as ten households a week, which had a devastating effect on the business. Its customer base is now half that of its historic peak and rapidly declining.

167. Throughout this time, instead of fundraising for its planned expansion, Bloosurf had to dedicate enormous resources to investigating and trying to remedy the interference, which

had caused a year-long FCC investigation and non-stop testing and investigation, along with time and effort devoted to customer service.

168. T-Mobile's interference also caused Bloosurf to become noncompliant with its obligations under multiple federal and state grants it had received.

169. This damage affected both Bloosurf's existing relationship with customers and its future ability to obtain customers by affecting Bloosurf's ability to provide network services, its reliability to provide these services, and its reputation to provide consistent and reliable services to its customers.

170. As result of the damage, Bloosurf's business, previously valued at \$116 million, fell due to its loss of customers, its reputational loss, and lack of network reliability.

171. This damage all stems from T-Mobile's willful or wanton interference with the spectrum used by Bloosurf to deliver its broadband services, in clear violation of 47 U.S.C. § 333.

172. Bloosurf is therefore entitled to damages as a result of the harm caused by T-Mobile's interference under 47 U.S.C. §206.

State Law Claims (Counts II-VI inclusive)

173. Notably, the existence of T-Mobile's violation of 47 U.S.C. §333 and the ensuing remedies available thereunder does not preempt or preclude Bloosurf from also bringing state law claims against T-Mobile.

174. Complete preemption only applies in a "very narrow" range of cases. *Johnson v. Am. Towers, LLC.*, 781 F.3d 693, 701 (4th Cir. 2015).

175. While ordinary preemption simply declares the primacy of federal law, regardless of the forum, complete preemption has the effect of "transform[ing]" a state-law cause of action into one arising under federal law because Congress has occupied the field so thoroughly as to

leave no room for state-law causes of action.” *Id.* (citing *Caterpillar Inc., v. William*, 482 U.S. 386, 399 (1987)).

176. Within the Communications Act of 1934, Congress passed 47 U.S.C. §414, stating: “[n]othing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.”

177. That language has never been revoked or amended.

178. Therefore, the subsequent counts may be brought before this court and are not precluded by Bloosurf’s claim of 47 U.S.C. §333.

COUNT II – Tortious Interference with a Business Relationship
(The EBS Lease Agreement)
(Against T-Mobile and TDI)

179. Plaintiffs incorporate by reference all the allegations previously stated herein.

180. The elements of tortious interference with a business relationship in the State of Maryland are: (1) an intentional and willful act; (2) calculated to cause damages to the plaintiff in their lawful business; (3) that was done with the unlawful purpose to cause such damage and loss without right or justification on the part of the defendants (which constitutes malice); and (4) damage to plaintiff. *GSP Fin. Servs., LLC v. Harrison* 2021 U.S. Dist. LEXIS 16341 (citing *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 703 (D. Md. 2011)); *Kaser v. Fin. Mktg., Inc.*, 376 Md. 621, 628-29, 83 A.2d 49 (2003).

181. When a contract is terminable at will, the plaintiff must also prove that the defendant employed "wrongful means," *Macklin v. Roberts Logan Assocs.*, 334 Md. 287, 304, 639 A.2d 112, 121 (1994) (internal citation omitted)— methods that are wrongful or unlawful, which include common law torts and violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecution in bad faith. *Ultrasound Imaging, Corp. v. Am. Soc’y of Breast Surgeons*, 358 F. Supp.

2d 475, 481, 2005 U.S. Dist. LEXIS 3259 at *15 (Md. Dist. 2005) (citing *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs.*, 336 Md. 635, 657, 650 A.2d 260, 271 (2005)).

182. The EBS Lease Agreement is a lease contract for the purposes of Md. Code Com. Law § 2A-101 *et seq.*

183. T-Mobile knew about the EBS Lease agreement and that it was the basis for Bloosurf's business in the region.

184. While meddling with EBS Lease, T-Mobile intentionally and unlawfully interfered with Bloosurf's spectrum in order to cause a downturn in Bloosurf's business and leave it unable to compete with T-Mobile. This supplies the "unlawful means" necessary to interfere with an at-will contract.

185. T-Mobile also sought to interfere in the EBS Lease Agreement in fall 2021 after (i) the disputes regarding signal interference had ripened as between Bloosurf and T-Mobile and (ii) the actual cause had been determined.

186. As such, T-Mobile intentionally and willfully interfered with the EBS Lease Agreement by:

- (a) initiating negotiations with the Universities to acquire the EBS spectrum used by Bloosurf in 2021;
- (b) Encouraging the Universities to not apply for the renewal of the EBS licenses, contrary to its contractual duty (i.e. cls. 1(c) and 6(a) of the Lease Agreement);
- (c) convincing the Universities to cancel the EBS Lease Agreement (or at least refuse to extend it further with Bloosurf);

- (d) drafting the Proposed Assignment and consent documents for the Universities to issue to Bloosurf;
- (e) signing a sales agreement with the Universities first and asking for Bloosurf's consent afterwards, thereby causing the Universities to unreasonably accuse Plaintiff of material breach; and
- (f) interfering with Bloosurf's coverage and operations through its 5G operations to make Bloosurf look unreliable.
- (g) Conditioning any discussions on the interference on Bloosurf's acquiescence to the lease transfer.

187. As stated *infra*, the Initial Term of the EBS Lease Agreement ended more than two years ago, yet the parties continued to operate under the terms of the EBS Lease Agreement. This constituted acquiescence to renew the EBS Lease Agreement until 2031.

188. With the upcoming expiration of the FCC's certification of the lease agreement in 2024, the Universities are obligated to cooperate with Bloosurf to obtain an extension with the FCC (*see* Exh. A clause 1(c) and 6(a)).

189. The actions by T-Mobile in 2021 to the present have caused the Universities to breach this contractual obligation.

190. Such interference is an unreasonable and unjustified practice that is presumably unlawful *per* the standards espoused in 47 U.S. Code § 201 *et seq.*

191. Now the Universities have refused to renew the FCC lease certification which expires in September and October 2024, respectively. Instead, they have noticed a default against Bloosurf, which has simply preserved its rights under Section 7.

192. This tortious interference has (and will) adversely impact Bloosurf.

193. As a result of this interference, Bloosurf's relationship with the Universities is irreparably damaged and its existing operations are crippled.

194. As a result of T-Mobile's tortious interference with the EBS Spectrum Lease, Bloosurf has suffered a \$116 million decrease in value.

COUNT III– Tortious Interference with Contractual Expectancy
(Government Grants)
(Against T-Mobile)

195. Plaintiffs incorporate by reference all the allegations previously stated herein.

196. In Maryland, in order to prove causation in a wrongful interference action, “the plaintiff must prove that the defendant’s wrongful or unlawful act caused the destruction of the business relationship which was the target of the interference.” *Serv. 1st Inc. Vending, Inc. v. Compass Grp. USA, Inc.*, 2021 U.S. Dist. LEXIS 68493 at *14-15, (citing *Medical Mut. Liab. Soc’y v. B. Dixon Evander & Assocs.* 339 Md. 41, 54, 660 A.2d 433, 439 (1995)).

197. As mentioned above, Bloosurf was the recipient of multiple state and federal government grants that utilized the EBS spectrum that was broadcast by Bloosurf.

198. These state contracts and federal grants are a matter of public record.

199. T-Mobile knew that Bloosurf had the exclusive right to broadcast on its leased EBS frequencies in the Eastern Shore.

200. T-Mobile intentionally interfered with Bloosurf's spectrum in order to cause a downturn in Bloosurf's business and leave it unable to compete with T-Mobile for spectrum.

201. As stated *supra*, T-Mobile intentionally and willfully interfered with Bloosurf's exclusive EBS spectrum through its undisclosed 5G transmissions and 4G transmissions outside its FCC allotted frequencies. This supplies the unlawful means as required by any “at will” contract with which it interferes.

202. T-Mobile knew that its 5G Network would interfere with other 4G networks broadcasting on a previously agreed “subframe” configuration and even switched its 4G configuration to mitigate its own 5G interference without consulting or notifying Bloosurf.

203. T-Mobile made every effort to conceal the nature and extent of its interference throughout multiple tests and investigations conducted by the FCC.

204. T-Mobile’s interference was calculated or done with reckless disregard as to its effect on Bloosurf’s signal, as well as Bloosurf’s performance of its obligations under the state contracts and federal grants.

205. The interference caused Bloosurf to fail to meet its obligations under the state contracts and federal grants.

206. Any proposed compatibility with T-Mobile’s 5G broadcast by converting the Bloosurf transmission to special subframe 7 would leave Bloosurf unable to fulfill the requirements of its government grants, namely the CAF2 award, which requires coverage over a specific distance (not to mention further financial investment of millions of dollars).

207. T-Mobile’s broadcast of 5G was intentionally deployed without ensuring compatibility with other broadcasts, including Bloosurf’s.

208. As a result of T-Mobile’s tortious interference with its state contracts and federal grants obligations, Bloosurf has suffered a \$116 million decrease in value.

209. This damage all stems from the T-Mobile’s purpose interference with the spectrum used by Bloosurf to deliver its broadband services.

**COUNT IV – Tortious Interference with Contractual Relations
and Economic Expectancy (Bloosurf’s Customers)
(Against T-Mobile)**

210. Plaintiffs incorporate by reference all the allegations previously stated herein.

211. Plaintiffs had contracts to provide its customers with internet and telephone services in Virginia, Maryland, and Delaware.

212. T-Mobile knew about these contracts and Bloosurf’s business expectancy.

213. As stated *supra*, T-Mobile intentionally and willfully interfered with Bloosurf’s exclusive EBS spectrum through its unauthorized 5G transmissions and 4G transmissions outside its FCC allotted frequencies.

214. T-Mobile knew that its 5G Network would interfere with 4G networks broadcasting on a previously agreed “special subframe” configuration and switched its 4G configuration to mitigate its own 5G interference without consulting or notifying Bloosurf.

215. T-Mobile made every effort to conceal the nature and extent of its interference throughout multiple tests and investigations conducted by the FCC.

216. T-Mobile’s interference was calculated to make Bloosurf lose existing and potential customers out of frustration with the interference and switch to T-Mobile as an internet and telephone service provider.

217. T-Mobile’s interference was further calculated to force Bloosurf to be unable to maintain the EBS Spectrum and thus disband its operations on the Eastern Shore, granting T-Mobile further control over the broadband market in the area.

218. T-Mobile and TDI used improper means to interfere with Bloosurf's business expectancy by illegally:

- (a) violating 47 U.S.C. § 333 through willfully transmitting frequencies on a Subframe that harmfully interfered with Bloosurf's coverage,
- (b) operating at unapproved frequencies and bandwidths, and
- (c) engaging in unfair competition by refusing to inform Bloosurf about the Subframe change and giving it the opportunity to adapt;
- (d) interfering with the EBS Lease Agreement and causing the Universities to not extend their EBS licenses which are otherwise due to expire in 2024, thereby putting at risk Bloosurf's ability to service its customer base.

219. Throughout 2021, 2022, and 2023, Bloosurf's customers terminated their accounts at a rate as high as ten households a week, which had a devastating effect on the business.

220. Throughout this time, instead of fundraising for the planned expansion, Bloosurf had to dedicate enormous resources to remedying the interference, which led to a year-long FCC investigation and non-stop testing and investigation, along with time and effort devoted to customer service.

221. T-Mobile had no right or justifiable cause to cause such damage to Bloosurf.

222. This damage affected both Bloosurf's existing relationship with customers and its future ability to obtain customers by affecting Bloosurf's ability to provide network services, its reliability to provide these services and its reputation to provide consistent and reliable services to its customers.

223. As result of the damage, Bloosurf's business, previously valued at \$116 million, has decreased severely as its reputational loss and lack of network reliability created by the

interference have caused significant numbers of customers to depart its network and left Bloosurf unable to obtain more customers.

224. This damage all stems from the T-Mobile's purpose interference with the spectrum used by Bloosurf to deliver its broadband services.

COUNT V – Negligence
(Against T-Mobile)

225. Plaintiffs incorporate by reference all the allegations previously stated herein.

226. In Maryland, as in most states, the elements necessary to support a claim of negligence (1) a duty was owed to the plaintiff; (2) that duty was breached; (3) there is a causal relationship between breach and harm; and (4) damages exist. *Van Leer v. Deutsche Bank, Sec., Inc.* 479 Fed. Appx. 475, 480, 2012 U.S. App. LEXIS 9091, *15 (4th Cir. 2012) (citing *Jacques v. First Nat'l Bank of Md.*, 307 Md. 527, 531, 515 A.2d 756, 758 (Md. 1986)).

227. As to the element of a legal duty, the degree of vigilance and circumspection required to constitute ordinary care must be proportioned to the harm which may result from the failure of a tortfeasor to order his conduct to avoid injury to others. *Johnson v. County Arena, Inc.*, 29 Md. App. 674, 679, 349 A.2d 643, 645 (1976).

228. T-Mobile had a duty to exercise ordinary care in its transmissions by operating its towers at its approved frequencies and bandwidths so that Bloosurf's (and others) service would not be interrupted by harmful interference resulting from T-Mobile.

229. Under the FCC's official communications to the parties, T-Mobile has a heightened duty to negotiate interference issues in good faith.

230. T-Mobile breached these duties daily by operating its stations at frequencies and bandwidths outside of their approved frequencies, and within the bandwidth and frequency Bloosurf had exclusive rights to under the EBS Lease Agreement.

231. T-Mobile also breached these duties throughout 2021, 2022, and 2023 by operating its stations at Subframe 2, special subframe 7 for its 4G and deploying a 5G network without informing Bloosurf. This led to an unavoidable conflict with Bloosurf's transmission.

232. T-Mobile also breached these duties throughout 2021 and 2022 by concealing the fact that it was transmitting 5G and that Bloosurf would have to change its Subframe, thus violating the FCC's command that interference issues be negotiated in good faith. T-Mobile's unilateral action in deploying 5G interfered with Bloosurf's broadband that was broadcast at special subframe 2.

233. T-Mobile had actual notice that Bloosurf broadcast on Subframe 2 because of the prior agreement that Bloosurf had made with Sprint in 2015.

234. T-Mobile knew that its simultaneous 5G and 4G transmissions would interfere with other Subframe 2 broadcasts as it intentionally switched its own 4G transmissions to Subframe 2, subframe 7 to avoid such interference.

235. T-Mobile also had a duty to inform Bloosurf that it was switching its Subframe due to its 5G transmissions. It did not do so.

236. Once the interference was detected, T-Mobile concealed the source of interference and failed to disclose to Bloosurf that its 5G network interfered with 4G transmission on Subframe 2, subframe 2.

237. T-Mobile's actions represented a breach of its duty to Bloosurf. That breach caused Bloosurf to lose its client base, make it unable to obtain new clients and fail to meet its obligations under its government grants and contracts.

238. T-Mobile's unreasonable conduct proximately caused damages to Bloosurf's business as a direct result of the interference, which meant that Bloosurf was unable to undertake the planned expansion of its business.

239. T-Mobile's unreasonable conduct was the proximate cause of Bloosurf's harm because it is foreseeable that radio frequency interference would cause a telecommunications provider to fail to provide telephone and internet services.

240. Bloosurf suffered \$116 million in actual harm and damages based on the negligent actions of T-Mobile as described herein.

COUNT VI – Private Nuisance

241. Plaintiffs incorporate by reference all the allegations previously stated herein.

242. Under Maryland law, an action lies in private nuisance where a defendant substantially and unreasonably interferes with a neighbor's use and enjoyment of his property. *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 251, 2000 U.S. Dist. LEXIS 9324 (Md. Dist. 2000) (citing *Exxon Corp. v. Yarema*, 69 Md. App. 124, 148, 516 A.2d 990 (1986)). It is a matter of strict liability. *Id.* (citing *Washington Suburban Sanitary Commission v. CAE-Link, Corp.*, 330 Md. 115, 126, 622 A.2d 745 (1993)).

243. The EBS Leases granted Bloosurf the exclusive right to broadcast at the leased frequencies. That represents a property right.

244. No other party has the right to use that designated spectrum or interfere with Bloosurf's use of this spectrum or its broadcast that utilizing the spectrum.

245. When T-Mobile started broadcasting its 5G network and its 4G network on Subframe 2, subframe 7, T-Mobile knew that it would interfere with Bloosurf's broadcast. Yet it unreasonably and substantially proceeded with that interference.

246. T-Mobile refused to remedy the interference and went as far as to conceal its 5G transmissions from Bloosurf when tests were made to determine the interference.

247. This interference constitutes a private nuisance that interferes with Bloosurf's use and enjoyment of Bloosurf's leased property, the EBS spectrum.

248. As a result of this nuisance, Bloosurf has:

- a. Lost a massive portion of its customer base.
- b. Lost the ability to obtain new customers due to the unreliability of its network caused by T-Mobile's nuisance.
- c. Been deemed non-compliant by the FCC as a result of the volatility created in Bloosurf's network by T-Mobile's nuisance.
- d. Been unable to bid on future state contracts and federal grants due to its noncompliant status with the FCC.
- e. Used all its resources to remedy the interference leaving it unable to address other business concerns, including but not limited to maintaining its obligations under federal and state grants, expansion of its business operations, etc.

249. This nuisance by T-Mobile damaged Bloosurf, causing Bloosurf's business valuation to decrease from its estimated valuation of \$116 Million.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, this Honorable Court should enter judgment for Bloosurf LLC in this matter and enter an order:

- 1) Award compensatory damages to Bloosurf, for which T-Mobile, Inc. and TDI Acquisition Sub LLC may be found jointly and severally liable, for losses suffered in the amount of \$116,000,000.00.
- 2) Award punitive damages to Bloosurf in the maximum amount allowed by Maryland law against T-Mobile, Inc. and TDI Acquisition Sub LLC for their willful and wanton conduct herein.
- 3) Award all further relief that this Court deems just and proper under state or Federal law, including equitable relief, costs, prejudgment interest, post-judgment interest and attorney fees, if applicable.

A TRIAL BY JURY IS DEMANDED

Dated: April 10, 2024

Respectfully Submitted,

BLOOSURF, LLC

By Counsel

/s/ J. Chapman Petersen

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²³ *Motion Pro Hac Vice forthcoming*

²⁴ *Motion Pro Hac Vice forthcoming*