

BOINGO WIRELESS INC  
Form S-8  
March 22, 2013

As filed with the Securities and Exchange Commission on March 22, 2013

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**BOINGO WIRELESS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or  
organization)

**95-4856877**  
(IRS Employer  
Identification No.)

**10960 Wilshire Blvd., Suite 800**

**Los Angeles, CA 90024**

(Address of Principal Executive Offices) (Zip Code)

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**Boingo Wireless, Inc. 2011 Equity Incentive Plan**  
(Full title of the plan)

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**Peter Hovenier**

**Chief Financial Officer**

**10960 Wilshire Blvd.**

**Suite 800**

**Los Angeles, CA 90024**

(Name and address of agent for service)

**(310) 586-5180**

(Telephone number, including area code, of agent for service)

**Copy to:**

**Ilan Lovinsky, Esq.**

**Kurt Oreshack, Esq.**

Gunderson Dettmer Stough Villeneuve

Franklin & Hachigian, LLP

3570 Carmel Mountain Rd., Suite 200

San Diego, CA 92130

(858) 436-8000

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.0001 par value	1,596,725 shares (3)	\$ 5.45	\$ 8,702,151.25	\$ 1,186.98

(1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "1933 Act"), this Registration Statement shall also cover any additional shares of Registrant's Common Stock that become issuable under the Boingo Wireless, Inc. 2011 Equity Incentive Plan (the "2011 Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the outstanding shares of Registrant's Common Stock.

(2)

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Estimated in accordance with Rule 457(c) promulgated under the 1933 Act solely for the purpose of calculating the amount of the registration fee on the basis of the average of the high and low price per share of the Registrant's Common Stock as reported on the Nasdaq Global Market on March 15, 2013.

- (3) Represents additional shares authorized as of January 1, 2013 under the evergreen provision of the Plan.
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**EXPLANATORY NOTE**

Pursuant to General Instruction E to Form S-8 under the 1933 Act, this Registration Statement is filed by Boingo Wireless, Inc. (the Registrant) for the purpose of registering additional shares of common stock, par value \$0.0001 per share, of the Company (the Common Stock) under the 2011 Plan. The number of shares of Common Stock available for issuance under the 2011 Plan is subject to an automatic annual increase on the first day of each of fiscal year of the Company during the term of the 2011 Plan equal to the lowest of (a) 4.5% of the total number of shares of Common Stock then outstanding, (b) 3,000,000 shares (subject to proportionate adjustment in the event of a stock split, reverse stock split, stock dividend, etc.), or (c) a number of shares of Common Stock determined by the Registrant's Board of Directors (the Evergreen Provision). Accordingly, the number of shares of Common Stock available for issuance under the 2011 Plan was increased by 1,596,725 shares effective January 1, 2013. This Registration Statement registers the 1,596,725 additional shares of Common Stock available for issuance under the 2011 Plan as of January 1, 2013 as a result of the Evergreen Provision.

The shares of Common Stock registered pursuant to this Registration Statement are of the same class of securities as the 4,000,000 shares of Common Stock registered for issuance under the 2011 Plan pursuant to the currently effective Registration Statement on Form S-8 (Registration No. 333-174157) filed on May 12, 2011 (the Original Registration Statement) and the 1,511,288 shares of Common Stock registered for issuance under the 2011 Plan pursuant to the currently effective Registration Statement on Form S-8 (Registration Number 333-181180) filed on May 4, 2012 (the 2012 Registration Statement). The contents of the Original Registration Statement and the 2012 Registration Statement, including any amendments thereto or filings incorporated therein, are incorporated herein by this reference. Any items in the Original Registration Statement and 2012 Registration Statement not expressly changed hereby shall be as set forth in the Original Registration Statement.

**PART II**

**Information Required in the Registration Statement**

**Item 3. Incorporation of Documents by Reference**

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the SEC):

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the SEC on March 18, 2013; and

(b) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement No. 001-35155 on Form 8-A filed with the SEC on April 27, 2011, pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the 1934 Act), including any amendment or report filed for the purpose of updating such description.

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All documents, reports and definitive proxy or information statements filed pursuant to Sections 13(a), 13(c), 14 and 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

### **Item 8. Exhibits**

See the accompanying Exhibit Index for a list of Exhibits to this Registration Statement, which is incorporated by reference herein.

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**Item 9. Undertakings**

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference in this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the 1933 Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the 1933 Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California on this 22nd day of March, 2013.

**BOINGO WIRELESS, INC.**

By: */s/ David Hagan*  
David Hagan  
Chief Executive Officer

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**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENT:**

That the undersigned officers and directors of Boingo Wireless, Inc., a Delaware corporation, do hereby constitute and appoint David Hagan and Peter Hovenier, and either of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and either one of them, determine may be necessary or advisable or required to enable said corporation to comply with the 1933 Act and any rules or regulations or requirements of the SEC in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

**IN WITNESS WHEREOF**, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the 1933 Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ David Hagan David Hagan	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 22, 2013
/s/ Peter Hovenier Peter Hovenier	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 22, 2013
/s/ Charles Boesenberg Charles Boesenberg	Director	March 22, 2013
/s/ Chuck Davis Chuck Davis	Director	March 22, 2013
/s/ Sky Dayton Sky Dayton	Director	March 22, 2013





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<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Marc Geller Marc Geller	Director	March 22, 2013
/s/ Paul Hsiao Paul Hsiao	Director	March 22, 2013

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EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 of Registrant's Registration Statement on Form S-1, originally filed with the SEC on January 14, 2011).
4.2	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.3 of Registrant's Registration Statement on Form S-1, originally filed with the SEC on January 14, 2011).
5.1	Opinion and consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP is contained in Exhibit 5.1.
24.1	Power of Attorney. Reference is made to page II-4 of this Registration Statement.
99.1	Boingo Wireless, Inc. 2011 Equity Incentive Plan.