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Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands – WT Docket No. 18-120 – NOTICE OF EX PARTE PRESENTATION*

Dear Ms. Dortch:

I am writing pursuant to Section 1.1206(b)(2) of the Commission's rules to report that on October 3, 2018, Lynn Rejniak and Todd Gray, representing the National EBS Association (“NEBSA”), and David Moore, Donna Balaguer, and the undersigned, representing the Catholic Technology Network (“CTN”), met with Jonathan Campbell, Matthew Pearl, Blaise Scinto, John Schauble, Nancy Zaczek, Nadja Sodos-Wallace, and Catherine Schroeder of the Wireless Telecommunications Bureau regarding the above-referenced proceeding. We made the following points during the meeting:

The EBS Regulatory Model is a Success. Last month, Assistant Secretary of Commerce for Communications and Information, David Redl, observed that the United States became a leader in spectrum policy through risk-taking, making mistakes, learning from failures and creating successes. That is *exactly* what happened with the Educational Broadband Service (“EBS”). When EBS was first allocated to education, the government took a risk. Educators, entrepreneurs, equipment manufacturers, and commercial operators also took risks. There were growing pains and things did not always work out as planned. However, in 2004, *with significant help from the EBS community* working in close coordination with the wireless industry, the 2.5 GHz band was transitioned and transformed to accommodate emerging technology, including wireless broadband services. Today, EBS works. It works because the Commission, the EBS community, and industry took risks and adapted as necessary. There is no need to “transform” the 2.5 GHz band now. The transformation *already* took place in 2004. Today, the band is successfully operating where licensed. It does not need fixing, it needs finishing.

EBS Spectrum is Not Underutilized. There is a misperception that even in areas where EBS is licensed, EBS is underutilized. That is not the case. The Commission’s forward-looking rules and policies, which were implemented in 2004, fostered many and varied educational uses of the band and a robust secondary market with commercial operators. Where EBS is licensed, which covers the vast majority of the U.S. population, the spectrum is widely deployed. The record reflects many examples of educational programs that rely on EBS. Furthermore, Sprint has repeatedly expressed in this proceeding, as well as in the T-Mobile merger proceeding (WT Docket 18-197), that the 2.5 GHz band is a fundamental component of its current 4G network and is the main data spectrum for its planned 5G network.

Local Priority Filing Windows will Enhance Rural Digital Education. The existing EBS regulatory model serves two important Commission objectives at the same time – it facilitates both digital education and commercial broadband deployment to consumers. The Commission should use that model to license EBS in areas of the United States where the spectrum remains unassigned. Despite misperceptions otherwise, the unassigned areas are estimated to cover just 15% of the U.S. population, mainly in rural areas where commercial operators have not yet had an economic incentive to build and serve. Educators, on the other hand, have significant and immediate needs to serve their students and extended communities with digital forms of education, particularly in rural areas. CTN and NEBSA support establishing local priority filing windows for Tribal Nations and new educational entities (limited to local accredited institutions and governmental entities). Significantly, this means that CTN and NEBSA members will be *excluded* from participating in new licensing opportunities. However, CTN and NEBSA’s objective is to extend the benefits of EBS to other educators who have been waiting for decades for the opportunity to apply and to realize the benefits of EBS.

The suggestion that issuing EBS licenses to educators is “no longer necessary” because many EBS licensees “ride over-the-top” of commercial broadband networks and lease 95% of their capacity is a red herring. There is *nothing wrong* with riding over-the-top of commercial broadband networks. Shared networks have been encouraged by the Commission as a means of making efficient use of spectrum – and it worked. EBS licensees are not “middlemen” that simply broker an asset. Rather, EBS licensees shoulder the primary responsibility for closing the homework gap and ensuring that all students – including indigent and rural populations – have access to technology so they are not left behind. Simply put, educators educate and commercial operators serve businesses and consumers for a profit. These are entirely different objectives. However, to the Commission’s credit, *both* objectives are furthered by the existing EBS regulatory model. There is no reason to strip away the educational benefits of this band, especially in rural areas.

EBS Should Not be Commercialized. The proposal to eliminate educational eligibility requirements so that EBS licensees have the option of selling their licenses to commercial entities may *sound* like a good idea. But, it’s not a good idea. The notion that EBS licensees will have the *choice* to sell or not to sell is illusive. Open eligibility will create a hostile leasing environment for educators who wish to remain EBS licensees. The existing leasing model provides licensees with the opportunity to negotiate ongoing and reliable educational benefits, including devices, services and support from commercial operators, for indigent, rural and underfunded schools.

With open eligibility, that relationship will dramatically shift. Commercial entities will have the incentive and ability to offer licensees unfavorable sale terms rather than new or renewed leases, cutting off educational benefits under the lease model. The fact that the two main organizations representing licensees have argued against open eligibility demonstrates that it is not a helpful “choice” or “option,” as it has been characterized. In short, the public policy objectives served by EBS will be permanently compromised by eliminating the eligibility requirement.

The Existing Educational Use Standard Should be Retained. On balance, CTN and NEBSA continue to believe that the existing educational use standard should be retained. Like the existing regulatory model for EBS generally – the existing standard works. Moreover, it is sufficiently flexible to accommodate the many and varied uses of EBS spectrum that are reflected in the record. While it may be tempting to try to convert the hourly educational usage minimum to a data or capacity minimum, those numbers would be firmly rooted in today’s technology. Data rates, data capacity, usage patterns, and types of services will dramatically change over time – but hours do not change. Like open eligibility, the suggestion that the educational use requirement should be eliminated may appear, on its face, to provide greater flexibility to licensees. However, CTN and NEBSA encourage the Commission to retain the requirement so that licensees have a benchmark for educational use – a benchmark that has successfully worked in the digital world.

EBS Geographic Service Areas Should be Rationalized. Like most commenters, CTN and NEBSA support the rationalization of existing GSAs so that they more closely conform to service areas of other wireless services. The size of GSA expansions is not a priority for CTN and NEBSA. CTN and NEBSA will support any reasonable rationalization process, deferring to the operational needs of carriers and the administrative needs of the FCC, as long as coverage of existing GSAs is not reduced in the process. Most parties support expansions to county boundaries. Since county boundaries generally conform to school districts, CTN and NEBSA also support that approach. Whatever process is selected, it should be simple, automatic, and easily implemented to avoid disputes and need for Commission intervention.

Respectfully submitted,

/s/ Edwin N. Lavergne

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