

Fish & Richardson P.C.
1000 Maine Avenue, S.W.
Suite 1000
Washington, DC 20024
202 783 5070 main
202 783 2331 fax

Edwin N. Lavergne
Principal
lavern@fr.com
202 626 6359 direct

October 30, 2018

Via Electronic Filing

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

Re: *Transforming the 2.5 GHz Band* – 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 29, 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 Commissioner Rosenworcel and Umair Javed regarding the above-referenced proceeding. During the meeting, we pointed out several misperceptions about EBS and provided the attached summary of those misperceptions.

We urged that EBS white space – which covers only about 15% of the U.S. population – be licensed through priority filing windows limited to Tribal Nations and new educational entities (local accredited institutions and governmental entities). Although CTN and NEBSA members will not benefit directly from priority filing windows given their incumbent status, CTN and NEBSA support the windows because they will benefit the education community as a whole, which has been waiting for decades for the opportunity to apply for EBS licenses.

We expressed concern with the proposal to license EBS spectrum through a voluntary incentive auction because an incentive auction would be fraught with legal challenges and practical difficulties. Among other things, most EBS spectrum is encumbered with long term leases, which include non-disclosure obligations. Moreover, leases vary widely in their terms. We indicated that even if an incentive auction was feasible and legally permissible, it would take years to work through these issues. If the goal is to help close the homework gap, CTN and NEBSA believe that licensing unassigned EBS spectrum to educational entities is the best way to achieve that goal while, at the same time, putting that spectrum into play for 5G.

Respectfully submitted,

/s/ Edwin N. Lavergne

Edwin N. Lavergne

cc Lynn Rejniak
 Todd Gray
 David Moore
 Commissioner Jessica Rosenworcel
 Umair Javed

1. **Misperception - EBS is Underutilized.** In areas where EBS is licensed, which cover about 85% of the U.S. population, the spectrum is widely deployed. EBS is underutilized only in “white space” areas where it has not yet been licensed. These unlicensed areas cover only about 15% of the U.S. population.
2. **Misperception - EBS Was a Spectrum Policy Mistake.** EBS (formerly ITFS) did have a difficult start decades ago, when it was used for video service. However, EBS was revitalized in 2004, when the entire 2.5 GHz band was overhauled to accommodate wireless broadband service. Today, EBS works. It works for educators, students, commercial operators, and consumers.
 - EBS is not hampering investment in the 2.5 GHz band.
 - EBS is not slowing commercial deployment in the band.
 - EBS is not holding-up spectrum needed for 5G.

Nothing is broken; nothing needs fixing. From a policy perspective, EBS facilitates digital education without government subsidies. Educators educate; commercial operators serve customers for a profit. These entirely different objectives are *both* furthered by the existing EBS regulatory model.

3. **Misperception – EBS is No Longer Necessary.** The notion that EBS is no longer necessary for education because many EBS licensees “ride over-the-top” of commercial broadband networks and lease 95% of their capacity is a misnomer. Shared networks were anticipated and encouraged by the FCC as a means of making efficient use of spectrum.
 - Leasing significant spectrum capacity makes perfect sense in a broadband environment where greater spectrum efficiencies can be achieved if a single entity subdivides and combines channels. The Commission encouraged such leasing, and educators embraced that call by establishing successful public-private partnerships with commercial service providers.
4. **Misperception – EBS Licensees are Middlemen.** Middlemen simply broker an asset. That’s not what happens with EBS. EBS licensees *educate*; commercial operators serve customers for a *profit*. These are different goals – both of which are served under the existing regulatory model (without government subsidies) because educators have a “seat at the table.” The best way to avoid positioning future EBS licensees as middlemen is to retain educational use requirements and limit eligibility to local accredited institutions and governmental organizations.