

Educational Broadband Corp.

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Federal Communications Commission
Washington, D.C. 20554

Re: WT Docket No. 03-66 (Terminated)
WT Docket No. 18-120

Rationalizing existing 2.5GHz holdings.

It appears the Commission wishes to find a political or geographic boundary to the 35 mile PSA circle so that it can be mapped and eliminate disputes as to just where that boundary is, arguing that circular smooth contours are open to debate as to locations of those boundaries.

It also appears that the Commission wishes to expand existing licenses to close small gaps between adjacent licensees.

In the debate of allowing that contour expansion to the adjacent census tract vs county line, the better method is the county line expansion. I see no argument for census tract mostly because it makes no improvement for anyone over the current situation due to the fact that all it will do is add "saw blade teeth" to the current smooth circle. That will not only be extremely burdensome to map and rationalize the boundary, it will provide unmanageable amounts of interference to the areas within the "teeth" from the areas between the "teeth". This will become so burdensome, it will result in large areas without service while 2 or more service providers spend capital on disputes instead of building out wireless infrastructure. In the county line approach, there will be a far more smooth, definable area that is simple to map. Most counties in the country have straight lines except where geography defines the boundary such as a river. Further, most counties (with few exceptions) have concentrated population near their center and less so at their boundary, minimizing interference at their boundary.

Any approach taken will not eliminate the hard to define line resulting from splitting the football in the last round of rule changes. In previous years, the Spectrum Dashboard mapping allowed a county line overlay and a split the football view. With that mapping, one could redefine a license area in minutes. It would take days to redraw a map of a circular license area of 35 mile radius. The split football boundary is just as open to debate as to its exact location as the circle but has not been a problem.

The county line approach may result in less auction space but because most licenses follow population centers, those areas will not attract the dollars anyway. In those counties where 2 or more licensees cross the county line, allowing their contour to

grow at equal rates will result in additional split the football situations which we are stuck with anyway. Such a method was proposed in the June 2014 consensus plan submitted by the Wireless Communications Association and the EBS community.

Further, the county line approach will result in unlicensed areas that are county size auction areas instead of slivers. The Commission should refrain from auctioning a sliver unless its shape meets certain enough criteria that the area is serviceable without interference and large enough to scale a business model. A normally defined service area is a 70 mile wide circle. A signal on a 200' tower can travel 10 miles omni-directionally, so anything less than a 20 mile wide sliver will interfere with neighboring systems.

On the request for comment on how to resolve situations where two or more co-channel GSAs overlap the same census tract, setting the threshold at 50% will not resolve the problem if each overlaps at 30%. It leaves a tiny area of white space no one wants but the 2 adjacent GSAs. So use a plan that divides it by letting their circles grow to absorb it, or better, go to county expansion and apply that same principle.

Additional Flexibility

While the additional flexibility concept has many features that sound good on the surface, it is going to be devastating to any EBS licensee who wants to realize the value for their institution. Understanding that the Commission doesn't want to get in the middle of the commercial lease transaction, it did set rules. By the rules it didn't set, the value will actually be extracted by the lessee. Of the many features of a typical lease, two most common and onerous are;

- obligation to report to lessee any offers which then triggers an offer to sell the license to the lessee whether or not the licensee intends to accept the offer.
- multi-year restrictions on any negotiations whatsoever, even up to 3 years after expiration of the lease, making some leases 33 year leases instead of the maximum of 30.

If the Commission is to sunset the rules, it needs to level the playing field by eliminating lease terms that transferred too much control to the lessee and could result in undoing any effort to make spectrum available at a faster pace.

For those licensees who were granted via waiver after the filing freeze should not be permitted to lease or sell as they were special condition licenses. Everyone was forced to live under the same rules so exceptions should not be made. If the Commission wishes to do such, the Commission should go through all the dismissed applications and grant them as well.

Opportunities to acquire new 2.5GHz Licenses

The Commission has not made it clear but it appears that there is a distinction between licenses with definite boundaries such as previously licenses but now forfeited

or licenses that were never issued but other channels that could have the same reference point as certain existing licenses and have similar geographic shapes. Other license areas may be broadly defined with no pre-conceived identity. It would be better to treat these differently as to identifying and getting them to market in a manner that allows a market to be filled in with all other existing channel groups. It will greatly simplify and speed up the process.

The NPRM is not clear whether the priority windows would be simultaneous or consecutive. The better presumption is that they be consecutive and in the order mentioned; Existing Licensees, Rural Tribal Nations and New Educational entities. Defining local should be broad so as to attract better applicants. Existing Licensees should include not only an applicant with post rationalization of existing license areas on a particular channel, but also include other EBS channels. More bandwidth in a geographic area is becoming increasingly important. Also, it should not require a minimum percentage of census tracts and should also include licensees of adjacent counties. Geographic expansion as well as bandwidth expansion are both just as likely and just as desirable.

If the Commission chooses to limit a window to local applicants, the definition of local should be very broad and not limited to mailing addresses, etc. Any tie to the community should qualify. For example, a university alumnus may no longer live in a community but could have a passion for giving back through education and could be a better licensee than one who lives in the community. An applicant could be local if it operates a business in the area.

Any window should limit the total number of applications by any one party in interest and the initial build out period should be short. For an educational institution, one link should be sufficient. As to applications for unassigned spectrum, the notion of filing windows and reserving eligibility to *local*, Tribal or otherwise will serve only to lengthen the process and repeat mistakes of the past. If the Commission were to look closely at the list of 41 licensees who failed to renew and then asked for reinstatement or the 122 who failed to meet the 2011 substantial service deadline the result would be that many of these were previous local applicants propped up by another party in interest during periods of application mills. Those were all granted but never moved on because the commitment to do so was never there. The only commitment was an upfront check by an organizer who promised to build MMDS systems. To avoid this, the Commission should prohibit negotiations for leasing prior to application.

As to the question of performance requirements, a new EBS license issued to an educational institution should not be held to the same standard unless and until there is a lease entered into for leasing excess capacity. Otherwise, I agree with the proposed benchmarks, provided however, if the lease is entered into at a later time than the issuance, the period of performance requirements should begin with the execution of the lease and carried into the second renewal period for a total of a 10 year period for measurement of compliance. While this might be procedurally more difficult to monitor,

it can be and has the benefit of still going to secondary market but takes the pressure off if the remaining time is short.

National filers should not be discouraged and are good at spreading opportunity among several educators in the same area. History will show that they are far more active with their licenses and share with a broader range of schools and are not bound by county lines. It is pretty rare that a local school will share such a resource with a neighboring school. An alternative to this approach is that an EBS applicant could be deemed eligible if it has established eligibility on other licenses.

In the event of competing applicants, the Commission should make it a part of the application process that the applicant state whether it would participate in competitive bidding. If competing applications arise, those not willing to bid should be excluded. For the remaining, establish a 30 day settlement period. If the 30 days go by without settlement competitive bidding will select the winner.

Census Tract vs. County.

Census tracts are too small, too cumbersome to map, can change over time, and cannot support a business as a standalone tract. Any citizen should be able to look at a map and understand the boundaries. Counties are much bigger and easily mapped. County boundaries are typically straighter and the size of a county would support a business of providing internet service. The PSA of an EBS license whose border is not intersected by another is 1,934 square miles (larger than most counties) while a census tract may only be 10 square miles. That puts the burden of an auction by census tract to be 193 times more costly and the paperwork enormous both before an auction and the monitoring after the auction. A census tract operator cannot operate from a tower or it would interfere with the census tract next door. On the other hand, the current 35 mile PSA allows 8-10 200' towers to provide service. Even most counties are too small and the aggregation of other counties is the ideal size for a business and the management of interference. In the Eastern US a 35 mile protected service area takes up about 6 counties, or major portions thereof. Adding portions of census tracts to the border is insignificant and very laborious. Adding the remaining portion of a county is not so difficult and yields a much more manageable area.

Using the county method, the number of licensed areas would resemble market sizes similar to the BTA size and more closely match those. CMA sizes are much larger and sometimes take shapes that are not consistent with demand for areas. Somewhere between those and including those is where market size is optimized.

Cleaning up the 2.5GHz rules

The proposed changes to the rules appear reasonable and necessary except that EBS licensees need a safe harbor to keep lessees from terminating a lease just before expiration and causing minimum construction benchmarks not to be met as an unfair negotiation tactic that could serve to bar arms length negotiation. I would suggest that if

a lease is terminated within 3 years before expiration but construction requirements were met at that time just before termination, Licensee shall be in compliance.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Farrell", with a stylized flourish at the end.

Thomas P. Farrell, Pres.