

In the Matter of)
)
Transforming the 2.5 GHz Band) WT Docket No. 18-120

The Rural EBS Coalition (the “Coalition”),¹ by counsel, hereby submits these comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.² For the reasons stated herein, the Coalition supports the Federal Communications Commission’s (“FCC” or “Commission”) proposal to open local priority filing windows, first to existing licensees, second to rural Tribal Nations and third to new educational entities. However, the Coalition urges the Commission to consider focusing not just on the local presence of the licensees but also on the local presence of their lessee partners. Finally, the Coalition asserts that the proposed holding period for lessees of newly-acquired EBS licenses would stunt the deployment of needed broadband in rural areas and should, therefore, offer holding period exemptions to local licensees partnering with local operators.

I. Background

The Coalition is comprised of EBS licensees, lessees and interested parties that serve very rural portions of the United States. Several Coalition members, such as Central Texas Communications, Inc. and Coleman County Telephone Cooperative, Inc., have leased and operated EBS spectrum for more than 15 years, first providing wireless video services and later

¹ See Appendix A for list of members in the Rural EBS Coalition.

² *In re* Transforming the 2.5 GHz Band, *Notice of Proposed Rulemaking*, WT Docket No. 18-120 (rel. May 10, 2018) (“NPRM”).

transitioning to much-needed broadband services in unserved and underserved areas. Due to its success with the 2.5 GHz band, Coalition member Mark Twain Communications Company recently reinvested in the band by acquiring lease rights to four additional licenses, adding to the nine licenses it already leases. Other Coalition Members such as Peoples Wireless and Etex Communications, L.P. have recently acquired EBS leases in order to provide fixed wireless services to customers who would not otherwise have access to broadband services at all.

The 2.5 GHz band is “the single largest band of contiguous spectrum below 3 gigahertz and has been identified as prime spectrum for next generational mobile operations.”³ However, despite attempts by some Coalition members to access the 2.5 GHz band, significant portions of this band remain unassigned, particularly in rural areas.⁴ The Coalition commends the Commission for taking steps to allow eligible EBS entities the opportunity to apply for new EBS licenses for the first time in over 20 years so that these rural areas may be served.

II. Discussion

A. The Rural EBS Coalition Supports Giving Priority to Existing Licensees, Tribal Nations, and New Educational Entities Located in Rural Areas to Apply for 2.5 GHz White Space that Covers Their Local Community

In the *NPRM*, the Commission proposes establishing three (3) local priority filing windows for qualifying applicants to apply for one or more channels of EBS white space in areas where the applicant has a “local presence.”⁵ The Commission proposes opening a filing window for existing EBS licenses first, followed by a second filing window for Tribal Nations, and then a third filing window for accredited educational entities. The Coalition supports these proposed local priority

³ *Id.*, ¶ 1.

⁴ *Id.*

⁵ *See id.*, ¶¶ 27, 29. *See infra* p. 5 (defining “local presence”).

windows as it provides the opportunity for eligible applicants to obtain spectrum in order to reach underserved rural areas.

Rural areas have been on the wrong side of the digital divide for too long. Many rural communities do not have access to fast and reliable broadband services, which results in a disparity as the world becomes increasingly technology-driven. Furthermore, there's a general lack of affordable spectrum available in rural areas. As demonstrated by members of the Coalition, EBS spectrum has provided a meaningful and affordable broadband solution to select rural communities. However, this has not been the case for all rural communities throughout the United States. More than half of the geographic area of the United States, the majority of which is rural, has been precluded from the benefits of EBS spectrum due to the fact that EBS spectrum in those areas has remained unassigned for years.⁶ If approved, the proposed three local priority windows will present the opportunity for local existing licensees, Tribal Nations, new educational entities and their local operator partners to acquire valuable spectrum rights for the first time since 1995.⁷ By opening up the spectrum to new licenses, the Commission will support bridging the digital divide, a top priority for the Commission.⁸ Thus, the Commission's new rules should focus on providing opportunities to the applicants within rural communities that have not been given the same chance as other institutions.

B. The EBS White Space Allocation Should Be for the Benefit of Local Educational Entities, Tribal Nations and Their Local Operator Partners

⁶ Even in areas in which EBS spectrum has been assigned, much of the spectrum has been locked up in long-term lease agreements with speculator and national carrier lessees who have shown little interest in deploying services to rural areas.

⁷ See *id.*, ¶¶ 1, 6.

⁸ See *Bridging the Digital Divide for All Americans* (last accessed July 27, 2018); <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans> ("Since my first day as Chairman of the FCC, my number one priority has been closing the digital divide and bringing the benefits of the Internet age to all Americans.").

In addition to giving existing licensees the first filing window, the Commission proposes the automatic expansion of existing licensee's GSAs.⁹ The Coalition generally supports the local priority filing windows and further supports GSA expansion to county boundaries.¹⁰ However, it is concerned about the potential for existing licenses and lessees, many of whom are national carriers without an invested interest in the local community and have thus far only deployed services in the most urban and profitable areas of their GSAs, to acquire additional spectrum without intention to deploy. Accordingly, to prevent the GSA expansion from resulting in a land grab for those licensees, the Commission should require Applicants' and their lessee partners to have ties to local communities in its rules.

In proposing the three local priority filing windows, the Commission notes that historically, local applicants have been preferred, as they are believed "to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities."¹¹ However, as the Commission is aware, it is national carriers that lease the vast majority of existing EBS licenses. The proposed GSA expansion would have the ultimate effect of favoring those national carriers to the detriment of local operators. On the other hand, giving priority to local existing EBS licensees, Tribal Nations, and new educational entities that either use the license themselves or lease excess capacity to a local operator supports the Commission's overarching goal of localism and diversity.¹²

⁹ See NPRM, ¶ 11.

¹⁰ *Id.*, ¶¶ 17-18.

¹¹ See *id.*, ¶ 26 (quoting *ITFS Local Priority Order*, 101 FCC 2d 56, para. 15).

¹² One of the Commission's five main missions is "[r]evising media regulations so that new technologies flourish alongside diversity and localism." See *What We Do* (last accessed July 27, 2018); <https://www.fcc.gov/about-fcc/what-we-do>.

It is not in the best interest of these rural communities to allow the proposed GSA expansion or new filing window to add to a national carrier's spectrum portfolio, such as to Sprint who already owns a large portion of 2.5 GHz band. As Commission Chairman Ajit Pai explained, "[w]e need to get this valuable spectrum into the hands of those who will provide service...particularly in rural areas where the spectrum is currently mostly unused."¹³ Therefore, the Coalition supports a required demonstration by Applicants and their lessee partners of "local presence."¹⁴ Building off of the Commission's definition of "local,"¹⁵ the Coalition asserts that "local" should be further narrowed to mean companies that are only present in five states or fewer. "Local presence" should be defined as "institutions and organizations that are headquartered, incorporated or organized within the state where service is proposed and have either deployed or shown a demonstrated interest in deploying services in the area."¹⁶ A "demonstrated interest" can be shown by existing operations or investment in the area, including but not limited to developing plans, hiring engineers, or deploying infrastructure. The Commission should focus on getting spectrum to those with a "local presence" by giving local entities and providers who know and have an interest in serving the rural communities the best opportunity to obtain such spectrum through GSA expansion or local priority filing window. The Coalition further urges the Commission to only allow GSA expansion for licenses used by the EBS licensee itself or leased to a local commercial operator.

¹³ *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Statement of Chairman Ajit Pai.

¹⁴ See NPRM, ¶ 29.

¹⁵ In the NPRM, the Commission proposes defining "local" as "those 'institutions and organizations that are physically located in the community, or metropolitan area, where service is proposed.'" NPRM, ¶ 29 (quoting *ITFS Local Priority Order*, 101 FCC 2d 49, 59, para. 22).

¹⁶ The Rural EBS Coalition further notes that this local presence requirement will deter speculators that only plan on flipping the spectrum at a later date for a profit from participating in the allocation.

With a direct connection to the local citizens in its service areas, local companies and/or institutions —educational, Tribal or operators—are best equipped to serve their own communities and should be given the opportunity to acquire spectrum to do so. These companies generally choose to serve their market areas based on a deep, abiding sense of obligation and loyalty to the heritage of the area, not because of the upside economic opportunity represented by the area’s profile. As a whole, these companies, relative to their overall capital structure, have a much higher need for affordable spectrum to be and remain viable. In other words, these companies work hard day in and day out to serve this underserved consumer segment in spite of the area’s unfavorable and unattractive economic profile. It is in the best interest of the citizens in these rural communities to be served by those with such a strong interest in those communities and therefore, the Coalition supports limiting licenses to those local institutions and organizations that can acquire the spectrum for serving its own rural citizens.

C. The Proposed Holding Period Would Stunt the Deployment of Needed Broadband in Rural Areas and Local Licensees and Lessees Should Be Exempt.

In the *NPRM*, the Commission considers imposing a holding period on newly acquired EBS licenses, in which a new licensee would be restricted from leasing or assigning its license for a certain period of time.¹⁷ The Coalition urges the Commission not to impose such a holding period on local licensees who are partnering with local operators as it may impede the Commission’s goal of timely and efficient build out in rural areas. Instead, the Commission should allow an exemption for the local licensees and lessees that fall under the proposed definition of having a “local presence.”¹⁸

¹⁷ See *NPRM*, ¶ 47.

¹⁸ See *supra* p. 5 (defining “local presence”).

Educational entities and Tribal Nations do not necessarily have the know-how or resources to build out a broadband network. Although educational entities and Tribal Nations may be the best resource for knowing what the community needs, it is unlikely that they are well-versed in the technicalities of building out broadband networks. As a result, if these entities are awarded licenses and subjected to a holding period, the spectrum may end up lying fallow as the inexperienced licensees struggle to buildout. Therefore, the Commission should consider rejecting the proposed holding periods and allowing an exemption for new licensees to partner with local commercial operators, who have a “local presence” and the experience and resources to build out. Allowing partnerships between new licensees and local commercial operators will ensure that the spectrum is used for its highest and best use, as well as further promote the Commission’s goals of localism and diversity.

The Commission further seeks comment on granting additional flexibility by (1) allowing licensees to assign or transfer control of their licenses to non-eligible entities or (2) eliminating the educational use requirements for EBS licensees.¹⁹ The Coalition does not support this proposal as it is counter-productive to the educational purpose of EBS spectrum. The EBS Band should remain educational and not be deduced to a purely commercial band, which is what would occur if these proposals are adopted.

III. Conclusion

The Coalition applauds the Commission for reopening this proceeding to facilitate assignment of unused spectrum in the 2.5 GHz band and improved access to wireless broadband, especially in underserved rural areas. The Coalition supports the Commission’s proposal to prioritize existing licensees, Tribal Nations, and educational entities in applying for EBS White Space that is located

¹⁹ See NPRM, ¶¶ 19-23.

in areas where the applicant has a local presence. It is imperative that the Commission require “local presence” for both licensees and lessees so that the local companies, organizations or entities that are best suited to serve their own communities be given the opportunity to do so. By requiring “local presence” for licensees and lessees in GSA expansions, filing windows and holding period exemptions, the Commission will prevent non-local/nationwide carriers from eating up all the available spectrum without deployment plans and ensure the spectrum falls into the hands of those with the highest interest in ensuring it reaches the underserved, rural communities. This is a rare opportunity for rural, local existing licensees, Tribal Nations, new educational entities, and their local operator partners to access affordable spectrum, which should not be taken away by giving larger corporations the first bite at the cherry. Finally, in line with the theme of localism, the Commission should reject the proposed holding periods so educational entities and Tribal Nations can partner with local commercial operators to ensure the highest and best use of the spectrum.

Respectfully submitted,

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APPENDIX A

List of Rural EBS Coalition Members

1. Adams Telephone Co-Operative
2. Cass Cable TV, Inc.
3. Central Texas Communications, Inc.
4. Coleman County Telephone Cooperative, Inc.
5. Colorado Valley Communications
6. Etex Communications, L.P.
7. Mahaska Communication Group, LLC
8. Mark Twain Communications Company
9. Public Service Wireless, Inc.
10. Texas RSA 7B3, LLC d/b/a Peoples Wireless