**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

In the Matter of **)**

**)**

Amendment of Parts I, 21, 73, 74 and IOI of the **)**

Commission's Rules to Facilitate the Provision of **)** WT Docket No. 03-66

Fixed and Mobile Broadband Access, Educational **)** (Terminated)

and Other Advanced Services in the 2150-2162 **)**

and 2500-2690 MHz Bands  **)**

**)**

Transforming the 2.5 GHz Band **)** WT Docket No. 18-120

Comment of Gallatin Wireless Internet, LLC

Gallatin Wireless Internet, LLC (“Gallatin”), by its attorneys, hereby submits its comments with respect to the issues raised in the captioned Notice of Proposed Rulemaking (NPRM). Gallatin is the operator of a regional wireless internet operation in the Billings, MT area. It uses both BRS spectrum and leased EBS spectrum to deliver its service to customers. It is therefore keenly interested in the Commission’s proposals to reform the EBS service and maximize the utility of this long underutilized spectrum.

1. Background

Gallatin applauds the Commission for undertaking this long overdue review of the Educational Broadband Service. As the Commission appears to be aware, the EBS is educational in name only. The service was originally conceived as a medium for the protected transmission of educational material by schools and universities to their students. That was a worthy concept back in 1963 when the 2.5 GHz spectrum band was viewed as having little commercial utility; there was not much downside in allocating some 76 MHz of bandwidth to allow schools to experiment with remote learning and intra-campus wireless communications. As it turned out, very few educational institutions had the money, the technical know-how, or the desire to put the spectrum to use, so it lay largely fallow.

All that changed in 1983 when the Commission authorized EBS (then called ITFS) licensees to lease a portion of their bandwidth for commercial use. Suddenly there was a land rush for the free licenses by educational institutions, many of which were put up to the application by commercial entrepreneurs who had deals in place to lease the excess spectrum. The old rules actually required a showing that the ITFS applicants genuinely needed more than one channel to meet their educational needs. Applicants averred with straight faces that they had such a need while at the same time agreeing to lease off 80% of their excess capacity. In today’s world many, but not all, EBS licensees make no educational use of their channels at all other than ostensibly using it for wireless internet access. The license is nothing more than a mechanism for getting a regular check to the licensee in exchange for a lease that provides the bare minimum of “educational” service in return for the maximum rent the school or school-surrogate can charge for its commercial use of the spectrum. To be sure, this results in schools, many of whom are financially strapped, getting a nice monthly subsidy, but if the public policy at stake here is simply getting money to schools, the current licensing arrangement is an incredibly convoluted and inefficient way of accomplishing that. And, frankly, the Dept. of Education is better equipped to handle those issues, not the FCC.

All of this suggests that the EBS is more than ripe for reform. Spectrum allocated for the sole purpose of delivering educational material should be used for that purpose only; otherwise, the spectrum should be available for commercial operations without the economically distorting extraction of payments to educational institutions. Simply stated, educational institutions that truly will use the spectrum solely for educational purposes should be allowed to hold the spectrum for that use alone. Leasing of EBS spectrum to commercial operators should be prohibited in its entirety. To ensure that existing arrangements are not unduly disturbed, this proposed change should be phased in as discussed below.

1. **Rationalization of EBS service areas**

Gallatin strongly supports the Commission’s proposal to expand existing EBS service areas to be coterminous with geographic boundaries rather than arbitrary 35 mile service area borders which often bear no relation to areas where the educational institutions are authorized to provide service. Gallatin also recognizes that use of geographic boundaries set by politically defined areas is far more conducive to an orderly auction of remaining white spaces if such an auction becomes necessary. However, instead of a purely census tract-based approach, Gallatin suggests that where a licensee’s current GSA covers more than 10% of the land area of a given county and no other licensee is authorized to provides service in that county, the licensee should be assigned the entirety of that county. This suggestion is based on the reality that if no one is currently authorized to provide service in those areas on a given channel, it is because the area does not have sufficient educational or commercial potential to be independently developed. The entity most likely to be able to provide service in these added areas is an existing adjacent licensee or its lessee which has an existing infrastructure and knowledge of the area involved. No other company or institution is likely to be in position to serve such areas and the attractiveness of such areas for auction purposes will be limited, thus likely leaving the area wholly unserved for the indefinite future.

Where two or more licensees currently have service areas on the same channel in a given partially served census tract, the Commission should allocate any census tract to any EBS entity that is the only EBS entity authorized to serve any portion of that tract for the same reasons outlined above for county allotment. Where only one licensee is authorized to serve at least 25% of a given census tract, that licensee would be assigned the entirety of the tract even if other licensees served smaller portions of the tract. The Commission could then assign any census tracts with multiple licensees who each are authorized to serve less than 25% of the tract to the licensee that is authorized to serve the larger percentage. We recognize that in some cases this may result in loss of service area by an existing licensee (including potentially loss of service to existing customers or students) but any other process will result in fragmented census tracts which would be difficult to license and auction. Trying to proportionally allocate the whitespace in a multiply served census tract would be impossible since, unlike the old “split the football” approach, the census tracts would have irregular shapes and the population and other factors in the white spaces could not easily, equitably, and without argument be allocated between or among the licensees.

In sum, it is an excellent idea from both the standpoint of encouraging faster and broader delivery of service in current white areas and simplifying any auctions that must be conducted to issue remaining white spaces to expand the GSAs of existing licensees who currently provide a significant level of service in the adjacent county or census tract.

1. **Spectrum use reforms**

Gallatin strongly supports the Commission’s proposal to allow the sale of existing EBS licenses to commercial operators for full commercial operation. This reform would at one stroke rationalize the investment in and development of the 2.5 GHz spectrum by allowing those who have been and will continue to be the drivers of broad usage of the spectrum to actually own it and have a lasting stake in its development. The commercial licensee would then be freed of the artificial obligation to provide free services to an educational entity who neither wants nor needs the free services but must accept them to meet FCC “educational use” requirements. Conversion to unfettered commercial operation would make this spectrum a far more appealing band for commercial operators to include in their long term service plans since they would no longer have to rely on lease arrangements subject to 15 year “re-thinkings” by the educational licensee. The lease status of this spectrum has cast a chill on the fullest use of this spectrum which will be alleviated by permitting licensed commercial operation. Gallatin recommends that upon the sale to a non-commercial entity, the license would be permanently converted to BRS status rather than EBS status to make clear that it is then subject to BRS rules.

EBS licensees would of course be under no obligation to sell to non-educational institutions, but if they did so desire, this would offer a way for them to “cash out” on the investment (sometimes a very minimal investment) that they have made in their licenses. The Commission’s proposal therefore offers benefits not only to the commercial community who can finally exploit the particular characteristics of this spectrum band to the fullest, but also to the educational community who can reap immediate financial benefits if they choose to do so.

1. Lease requirements

As noted above, the utility of the EBS spectrum is diminished by the need to lease the spectrum from educational institutions with all the attendant lease restrictions that have accreted over the years, including limits on term length, 15 year opt-out clauses, and educational use obligations. To the extent that EBS licensees choose to continue leasing their spectrum, it will ease the unnecessary burden on the spectrum to eliminate these obligations for the same reason that conversion to outright commercial use is beneficial. The lease restrictions simply to restrain or chill the ability of commercial lessees to plan for, develop and implement business plans that depend on long term full availability of the spectrum. Gallatin fully supports the elimination of these unnecessary barriers to full spectrum use.

1. Educational use of the spectrum

As the EBS service moves toward a model where it may be used exclusively for non-educational uses either by lease or sale, it makes sense for the Commission to consider the conditions on whether educational use of the band should be protected at all. Gallatin proposes the following plan. As indicated above, the band was originally established to permit educational applications by schools and other institutions. Gallatin believes that goal should be preserved, but on an exclusive basis. That is, EBS licensees who wish to use their existing spectrum for educational purposes could continue to do so but would not be permitted to lease or otherwise commercialize their use of the spectrum. This would not only further their educational missions but would also permit them to continue to enjoy the benefits of the EBS service such as freedom from regulatory fees and application fees. In effect, this reform would restore the service to its original intent.

Some licensees do in fact use the service for these purposes, so they would be able to continue to do so. In addition, without the incentive to lease “excess capacity” to commercial operators, EBS licensees would retain only the amount of spectrum that they actually need and use for their educational goals. Currently, such licensees acquire as much spectrum as they can regardless of their educational needs because they can lease the excess on the commercial market. This is not what the spectrum was originally allocated for. The spectrum not needed for educational purposes would then be freed up for commercial use either by the EBS licensees selling their unneeded spectrum to commercial operators or turning the unused and unneeded spectrum in to the Commission. The result of this reform is that there would be a clear demarcation between educational spectrum and commercial spectrum. Educational needs could continue to be served by the licensees that wish to do so, as originally contemplated when this serve was created, and commercial operations would take place on spectrum clearly designated for commercial operations.

Because many EBS licenses are subject to on-going spectrum leases, this reform would have to be phased in to avoid disruption of current services and arrangements. Under current rules, EBS lessors must have the right to re-think their educational needs at the 15 year mark and every five years thereafter. The Commission should make it clear that at that 15 year/5 year point, the EBS licensee would need to make an election. If it wishes to use its spectrum educationally, it would have the right under the current rules, and the obligation under the rule proposed here, to terminate its commercial lease and use its spectrum exclusively for educational purposes. Since commercial lessees have been aware of this potential for reformation or termination of their leases for at least 15 years, there is no unfairness to them. If the EBS licensee elects not to use its spectrum educationally, it could sell the license either to its existing lessee (some leases give existing lessees rights of first refusal) or to any other commercial operator if there were no restrictions in the lease. Many leases also have 5 year automatic renewals at the option of the lessee. In such circumstances, if the lessee elects not to renew the lease, the obligation to elect or not elect exclusively educational status would kick in at the expiration of the lease, again with no unfairness to either party. This plan avoids any immediate disruptions in the EBS leasing scheme but takes advantage of opt-out or lease non-renewal provisions that are already built in to most leases.[[1]](#footnote-1) At the end of this process, the EBS/BRS landscape would consist of either true EBS licensees providing exclusively educational service or true commercial operators using the spectrum for its fullest commercial purposes.

1. **Acquisition of new EBS licenses**

The Commission proposes to open new filing windows for different categories of EBS licensees or potential licensees. Gallatin recognizes that part of the Commission’s objective here is to limit the need for auctions to license current EBS white spaces. In furtherance of the licensing scheme set forth above in which educational and commercial uses are sharply demarcated, Gallatin makes the following suggestion.

1. Once the boundaries of existing EBS licenses have been rationalized by the process proposed by the Commission, the Commission would open a single filing window for existing licensees with current operations in the counties where there are white spaces, recognized Indian tribes whose reservations include territory in the white spaces, and new licensees who have local physical educational presence in the white space. Consistent with the concept that EBS licenses should be used exclusively for educational purposes, licenses issued in this window could not be used for commercial purposes at all ever. If the licensee later decided that it does not want to provide commercial service, it could return the license to the Commission for cancellation or transfer it to another educational licensee but could not assign it for commercial use. This would ensure that spectrum speculators would not file applications either themselves or as backers of front applicants in the hope of commercial gain.
2. After the filing window has closed, the Commission would allow any mutually exclusive applicants (including all three applicant groups) to reach settlements among themselves for the allocation of the available spectrum. Cash payments or other consideration should be available to encourage settlements, but since the allowed use of the spectrum would be exclusively non-commercial, such payments would be expected to be small but reflective of the educational institutions’ actual level of need for the spectrum. If the parties are unable to agree, the Commission would divide the available spectrum among the applicants equally, with no applicant getting less than a full EBS channel. If there is not enough spectrum to distribute on this basis to the applicants, no applicant would get the spectrum and it would go into the auction pool described below.
3. If there is unassigned spectrum after the process above, the remaining white space spectrum should be reallocated as BRS spectrum and put into an ordinary auction under the Commission’s normal auction rules. The idea here is that in most cases if the white space was not applied for by any educator or tribe who wants it for educational purposes, then the better – perhaps the only -- use of the spectrum is for commercial BRS operations. There is no need to continue to reserve it for educational use. However, if there were EBS licensees who were eligible for assignment of licenses but unable to be assigned them under the process described in Paragraph 2 above, those applicants would be granted a 75% discount as bidders in the BRS auction for those specific licenses. Any licenses they won in the auction by use of this discount would be subject to the same use and alienation restrictions that would have applied to a non-auctioned license for that white space.

The benefit of this process is that it affords potential true educational entities an opportunity to acquire new licenses for free but only if they have roots in the local area and are truly going to use it for educational and non-commercial purposes. This restriction should limit speculative applications. The settlement process should winnow the numbers down further and allow most MX situations to be resolved by agreement and without the applicants having to pay for the licenses. Putting any remaining areas into the general BRS auction has the effect of getting all of the 2.5 GHz white spaces licensed quickly in a single auction while offering true educators a real opportunity to buy discounted spectrum where they were eligible for a free grant after all other assignment procedures have failed. This process seems to meet the objectives established by the Commission in an expedited process that serves the true educational interests which the Commission seems to be seeking to protect.

1. **Conclusion**

Gallatin believes that the reforms proposed above, which are largely consistent with the Commission’ own proposals, will restore the EBS service to its original purposes and will also free up spectrum that is not being used educationally for more intense and unencumbered development. The interests of existing EBS licensees, commercial lessees, and potential new educational licensees are protected while using procedures that speed the rationalizations and prompt assignment of all available licenses. Gallatin therefore urges the Commission to adopt the proposals presented here.

Respectfully submitted,

Gallatin Wireless Internet, LLC

By: \_/s/\_\_ Christopher Davidson

President

1. A few older leases that remain in place may not have opt-out or early termination clauses, so the mandatory election date would not be triggered until the lease expires. [↑](#footnote-ref-1)