

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101	)	
of the Commission's Rules to Facilitate the	)	WT Docket 03-66
Provision of Fixed and Mobile Broadband	)	(Terminated)
Access, Educational and Other Advanced	)	
Services in the 2150-2162 and 2500-2690	)	WT Docket No. 18-120
MHz Bands Transforming the 2.5 GHz Band	)	

**COMMENTS OF  
HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC.**

Hispanic Information and Telecommunications Network, Inc. ("HITN"), pursuant to Section 1.415(b) of the Commission's Rules, hereby submits its Comments in the above-captioned proceeding regarding the licensing of presently unassigned EBS spectrum (the "Unassigned EBS Spectrum"), and options to transform the 2.5 GHz band to open eligibility and to streamline the EBS licensing and operating rules so as to facilitate and promote spectrum availability for commercial deployments.<sup>1</sup> HITN is a non-profit corporation and programmer of HITN TV®, a Spanish language noncommercial programming channel, and is a holder of EBS stations in the continental United States, Hawaii and Puerto Rico (See Attachment 1 for a more complete introduction). HITN commends the Commission's initiative in attempting to license the

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<sup>1</sup> *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 Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking in WT Docket 18-120, FCC 18-59, released May 10, 2018 (terminating WT 03-66 and subsuming all comments filed within that proceeding into WT Docket 18-120)(NPRM). By order released on June, 12, 2018, the Commission provided an extension of time for the filing of Comments, until August 8, 2018.

Unassigned EBS Spectrum to facilitate its availability for the deployment of nationwide advanced mobile broadband services like 5G.<sup>2</sup>

HITN supports substantially maintaining current EBS licensing eligibility restrictions. The present voluntary leasing and secondary market system has proved successful in making excess capacity readily available for commercial service deployments, while allowing for the private funding and development of educational services and usage. Therefore, HITN does not see a need for opening up eligibility, changing rules to promote commercial ownership or conducting overlay or incentive auctions. HITN supports the general retention of current leasing and operational rules, and the continued use of voluntary leasing to make existing and newly issued license excess capacity available for commercial usage. HITN also supports an initial expansion of existing EBS GSAs to county boundaries, to eliminate gaps between service areas, before addressing the licensing of Unassigned EBS Spectrum.

## **DISCUSSION**

### **I The Leasing Model has been an FCC Success Story.**

The present EBS leasing model set up by the FCC in 1983 has been a great success, and is not a legacy of failed past Commission command and control policies.<sup>3</sup> Such leasing has: 1)

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<sup>2</sup> Since 1985 HITN has participated in almost all proceedings affecting this band. HITN was among the group in 2014 that offered a proposal as to how the Commission should address the Unassigned EBS Spectrum. *See Ex Parte Letter from Catholic Technology Network, National EBS Association, Wireless Communications Association International and Hispanic Telecommunications Information Network, Inc.* (filed June 6, 2014)(“2014 Joint Proposal”).

<sup>3</sup> While the original 1983 proceeding, could be characterized as command and control, because it dealt with the allotment issues and the leasing of educational video spectrum to facilitate an emerging commercial cable competitive wireless video service, later rule changes opened the model for flexible usage for any fixed or mobile video, voice and data service. In that proceeding, the Commission encouraged EBS Licensees to lease out their excess capacity and

allowed the FCC to maintain the only spectrum band reserved for educational licensing and deployment; 2) provided such licensees with a funding mechanism not dependent on public tax dollars for the development and deployment of educational communications services and usage both on and off the band; and 3) through the leasing of excess EBS capacity, has allowed for the substantial availability of EBS spectrum for evolving commercial deployments, regardless of whether that use is mobile or fixed, video, voice or data.<sup>4</sup> This system, coupled with a robust secondary market, has allowed the further subleasing of such capacity to ensure that the excess capacity of this valuable public asset may be rapidly shifted to its highest and best use.

Aside from the fact that for years a good deal of the EBS Spectrum has remained unlicensed, thereby restricting the potential reach of commercial businesses launched on the 2.5GHz band, there has been little discernable difference in the speed or scope of deployments of LTE services by some operators on commercially licensed spectrum bands and Sprint on the leased excess capacity of EBS spectrum. Since 1983, the present leasing methodology has effectively provided capacity on this band for numerous large and small commercial services. In fact, as several Commissioners have noted, as many as 90% of EBS licensees currently lease some of their

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later to maximize such leases at up to 95% of capacity. *See Amendment of the Commission's Rules with Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems*, Report and Order, 94 FCC 2d 1203 (1983)(“*Leasing Report and Order*”); *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order in MM Docket No. 97-217, 13 FCC Rcd 19112 at para 89-90 (1998).

<sup>4</sup> As correctly predicted by the FCC in 1983, with the partial commercial exploitation of the band through leasing, educators have obtained lease revenues to fund their educational communications deployments and to otherwise further their educational missions and have realized decreased costs for commercially developed and scaled equipment usable on the band. *See Leasing Report and Order*, 94 FCC 2d 1203 at para 110 & 114. As explained in Attachment 1 hereto, HITN has in part used funds and equipment generated by its leases to provide fixed wireless and broadband services to schools and libraries in the continental US and in Puerto Rico. HITN has also used funds generated from its leases to fund the development and operations of its national and noncommercial Spanish language educational programming service, as well as educational video production, online services and other educational projects and initiatives across multiple platforms, including the largest online Spanish-language health-information platform in the world.

excess capacity to such commercial operators. The flexibility of the current leasing and secondary market system can continue to serve as a useful means to avoid spectrum warehousing and to continue to rapidly allocate 2.5GHz excess capacity to its highest and most valued uses on a market by market, as well as on a national basis.

The NPRM correctly avoids any suggestion that existing excess capacity leases should be invalidated or significantly amended to facilitate or comply with proposed EBS Rule changes. Both commercial lessees and educational lessors, have invested in services and equipment, in substantial reliance on the negotiated terms of their existing leases, and the Commission should make no rule changes that would interfere with or substantially alter such contractual rights and obligations.

## **II Prior to Any Licensing of Unassigned EBS Spectrum, The FCC Should Rationalize Existing Geographic Service Areas to Eliminate Coverage Gaps and Create a more Uniform Licensing Scheme.**

HITN Supports the proposed initial automatic expansion of existing GSAs in order to remove service gaps and rationalize service area boundaries, before addressing the remainder of the Unassigned EBS Spectrum. Due to the gradual evolution of EBS from a site based licensing scheme to a geographic one, gaps were inadvertently created between existing licenses and geographic shapes were created that do not conform to recognized geographic boundaries. The FCC has proposed an automatic initial expansion for incumbent licensees to either census tract or county boundaries.

HITN believes that county boundaries represents the preferential choice for such automatic expansions. First, if expanded only to the nearest census tract, gaps would continue to exist and the service areas for incumbent licensees would become jagged and would remain relatively hard

to map. Second, remaining gaps would then need to be licensed, in many cases by individual census tracts, which might result in technical difficulties in providing service to such areas and interference concerns with regard to simultaneous operations of different services in adjacent small census tract areas. Third, where census tracts would be surrounded, or would be hard to serve, no applications might be filed for them during the windows or auctions and they might simply remain as unservable and unlicensed gaps. Fourth, if special window licenses are issued on a county by country basis, expansion of incumbent GSAs to county boundaries will allow for a more rational and consistent use of county boundaries in defining service area borders.

As suggested in the *2014 Joint Proposal*, any existing station that crosses a county line should be simultaneously expanded into that county, and any overlaps between different expanding GSAs should be bisected in the manner used by the FCC in creating the original EBS GSAs.<sup>5</sup>

### **III Major Changes to the EBS Rules are Not Necessary as Changes May Prove Detrimental to Commercial Service Operations and Current Lease Obligations.**

Wholesale changes to the EBS rules are unnecessary to achieve the Commission's main objectives. Even if the Commission were to open eligibility for some of the Unassigned EBS Spectrum, current EBS rules would not pose an impediment to its use on a commercial basis. The FCC presently allows NCE radio stations operating on commercial frequencies to be regulated under the noncommercial provisions of Part 73 of its rules and has allowed grandfathered EBS licensees operating on BRS frequencies to be regulated under the noncommercial EBS rules

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<sup>5</sup> Due to contractual obligations, current operator deployments and end user reliance on present GSA service areas, no GSA should be reduced in any way to align its borders with county boundaries. Also, due to the need for licensees and their commercial lessees to incorporate any new areas into their existing systems, the Commission should build in substantial time for Licensees to comply with any new construction or service related obligations for GSA expansion areas.

contained in Part 27. To the extent that any spectrum in the EBS band is licensed through auction to a commercial entity, such license could easily be subject to the commercial BRS rules already existing in Part 27 of the Commission's Rules, while any licenses issued in special reserved band windows would remain subject to existing EBS Rules. Accordingly, there is no need to streamline existing EBS operational rules to facilitate any potential commercial licensing. Additionally, with regard to any revisions or modernization of rules related to EBS operations and usage, the FCC should seek to make only essential changes, or to exempt existing licensees from certain changes for the remainder of their current lease, in order to avoid disruption to existing commercial services and leases.

HITN acknowledges that the usage rules are somewhat awkwardly tied to the original educational distance learning video service provided on the band, and which now constitute only one of a number of possible educational uses. In practice, the market has addressed licensee broadband usage by providing EBS licensees with a monthly equipment allowance or a specific number of educational monthly accounts of the operator's commercial service offerings that the EBS licensee may deploy in furtherance of its educational mission and to assist in satisfying the FCC's usage requirement standard. Because a licensee's spectrum is often combined with that leased by other EBS licensees as well as the operator's commercial spectrum over a robust commercial network, licensee equipment can provide reach and capabilities beyond that which might be facilitated from a limited build on its own retained spectrum. If the FCC attempts to update the reserved capacity and usage requirement, care should be taken to create a standard that can be achieved by both large urban and small rural educational institutions and nonprofits serving such institutions. The standard should not be so burdensome as to require expensive or technologically complex usage tracking capabilities and should allow for the myriad of different

educational applications relied upon by licensees and their end users. Further, the Commission should be mindful not to adopt changes that would require a wholesale renegotiation of existing agreements, which could in turn lead to the radical disruption of existing commercial deployments and service to existing commercial customers.

If the FCC decides to address renewal expectations, any rule optimally would be based on the current “substantial service” rules and safe harbors already made applicable to EBS. The FCC should keep in mind that, in many cases construction of underlying infrastructure upon which EBS licensees provide their educational services has been built out as part of an wide-area commercial system by operator lessees. While safe harbors based on construction should be usable for any renewal expectancy, licensees should be allowed to demonstrate substantial service based on any of the available safe harbors.

## **CONCLUSION**

For the reasons set forth herein, HITN urges the Commission to retain the current eligibility restrictions on the EBS band to ensure that spectrum remains available for educational use, while continuing to rely on voluntary leasing and a robust secondary market to ensure that spectrum in this band remains available for advanced wireless broadband service deployments and may be quickly shifted to its highest and best use. HITN also requests that the FCC initially expand the GSAs of current EBS licensees to county boundaries, in order to eliminate gaps and create a more rational and consistent licensing scheme, before proceeding with the licensing of currently Unassigned EBS Spectrum. Finally, HITN urges the Commission to avoid any unnecessary, or potentially service-disruptive rule changes and to implement only rule changes that are based on existing standards previously used in conjunction with EBS or which are sensitive to the special needs of both large

urban and small rural educational institutions and nonprofits serving such institutions and which allow for the myriad of different educational applications relied upon by such licensees.

Respectfully Submitted,

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Attachment 1  
HITN – AN INTRODUCTION

Hispanic Information and Telecommunications Network, Inc. (“HITN”) was established in 1983 as a non-profit organization dedicated to using telecommunications technologies for the advancement of Hispanic Americans and other minority audiences in the U.S. and Puerto Rico. HITN’s current mission is to advance the educational, cultural and socio-economic aspirations of U.S Hispanics through the development and distribution of quality and authentic content, on-air, online and on the ground.

HITN, is managed by a board of directors and a professional management team, and operates out of offices and studios located at the Brooklyn Navy Yard in New York as well as offices in Washington DC and San Juan, Puerto Rico. (<https://hitn.org/about-us/management-team/>)

HITN, holds Educational Broadband Service ("EBS") spectrum across the continental U.S., Hawaii and Puerto Rico. EBS is the only Spectrum band licensed specifically to educational entities for the provision of educational broadband services. Since its inception, HITN has engaged with commercial service providers to leverage their commercial platforms for educational uses in furtherance of its educational mission. HITN was among the first educational entities to partner with Craig McCaw’s original Clearwire Corporation in its bid to launch a nationwide wireless broadband platform on the 2.5GHz band. Under current FCC rules and policies, HITN has entered into partnerships with Sprint Corporation and Puerto Rico Telephone Company, Inc. (d/b/a Claro), two commercial service providers, that have enabled HITN to provide 4G LTE wireless mobile broadband services to educational institutions, libraries and non-profits in the continental U.S., Hawaii and Puerto Rico. HITN has also used funds generated from its Sprint and Claro leases to support the development and operations of its Spanish language educational programming service, as well as its online services and other educational projects and initiatives across multiple platforms. These services include:

**HITN TV** – This programming channel reaches 44 million homes across the United States and is carried by all major cable and satellite operators as well as by several telecommunication companies and digital platforms. HITN TV serves Hispanic families by providing a mix of self-produced, acquired and syndicated Spanish-language programming. Some of its key programming genres include Current Affairs, Nature, Science and Technology, Health and Wellbeing, and Preschool.

**HITN Digital Services** – HITN has created and operates a number of Spanish language based services specifically for digital platforms. HITN’s recently released “TV-everywhere” apps allowing access to HITN TV on mobile devices, as well as a robust video-on-demand platform

with all HITN content. HITN will soon offer Edye, the first preschool premium SVOD service in Spanish-language in the United States. HITN Digital Services also manages VidaySalud.com, the largest Spanish-language health-information platform in the world. HITN also distributes Sprint and Claro enabled devices to schools and libraries in the continental United States and in Puerto Rico for access to its online digital services and for distribution to faculty, administrative staff and students in furtherance of their own educational missions.

**HITN Learning** – HITN leverages its production and distribution capabilities to produce high quality bilingual educational materials that meet the needs of Hispanic American families with children between 0 and 14 years of age. Produced materials are useful to parents, caregivers, teachers, grandparents and institutions in the United States, such as schools, day care centers, community centers and hospitals. HITN’s “Early Learning Collaboration” produced under a \$30 million grant from the federal Ready to Learn Program (2010-2016), is an HITN created and distributed series of transmedia learning resources designed to promote school readiness, which have now been tested at Head Start centers, public and private schools, day care centers and special education facilities in 11 states, D.C. and Puerto Rico. Newly produced by HITN Learning for the fall of 2018 will be “Cleo & Cuquin Family Fun Kits and Apps”. Based on the new Nickelodeon Jr.’s preschool television series, these apps offer a uniquely entertaining world of highly engaging child-centered bilingual print and digital material plus hands-on activities, all supporting Kindergarten learning and success.

**HITN Community** - HITN brings to life its mission to educate while entertaining by hosting interactive events across the country designed to promote important topics such as early education, health and wellness, and science and technology.

Since its inception, HITN has worked with community-based organizations serving and representing the Hispanic community. HITN's unique and close relationship with groups like the Congressional Hispanic Caucus Foundation, the U.S. Hispanic Chamber of Commerce, LISTA, LULAC, NCLR, NALEO, Aspira, HACU and other major Latino organizations provides a strong audience base from the membership of these organizations and an opportunity for Hispanics and non-Hispanics alike to address the educational and informational needs of this vibrant and growing Hispanic community. These relationships allow HITN to produce programming originating from the conventions, events, and meetings of Latino organizations as well as showcase those proceedings on [www.hitnonline.tv](http://www.hitnonline.tv).