Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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	)	WT Docket No. 03-66 RM-10586
	)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures	)	WT Docket No. 03-67
	)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions	)	MM Docket No. 97-217
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico	)	WT Docket No. 02-68 RM-9718
	)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	)	WT Docket No. 00-230

JOINT REPLY COMMENTS OF
THE CATHOLIC TELEVISION NETWORK
AND THE NATIONAL ITFS ASSOCIATION

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SUMMARY

The Catholic Television Network ("CTN") and the National ITFS Association ("NIA") represent the interests of the majority of Educational Broadband Service ("EBS") licensees in the United States. They also are members of the original coalition that submitted the white paper that led to the initial Notice of Proposed Rulemaking in this proceeding.

Grandfathered E and F Channel Stations. With respect to the transition of grandfathered E and F group EBS licensees to the new band plan, CTN, NIA, WCA, and other parties have proposed the use of the same "split-the-football" approach that is being used to establish Geographic Service Areas for all other EBS licensees. One party, NY3G Partnership, has asked the Commission adopt special requirements to address situations where there are substantial service area overlaps between grandfathered EBS licensees and co-channel commercial licensees on the E and F group channels. CTN and NIA oppose NY3G's request. The split-the-football approach offers an equitable solution in *all* cases where there are service area overlaps between co-channel licensees. Thus, from a policy perspective, there is no need to adopt special requirements to address NY3G's concern.

Performance requirements. CTN and NIA supported the adoption of substantial service performance requirements, called for leeway in the application of those requirements for the first five years after transition, and proposed two safe harbors for EBS licensees (in addition to those that will be applied generally to licensees the 2.5 GHz band). With the exception of one party, the record reflects substantial support for these proposals. Clearwire Corporation has proposed a much tougher "initial substantial service" requirement, which, in essence, would require incumbent users of the band to achieve two-thirds coverage of the entire country on all channels in five years, under penalty of loss of license. This proposal should be rejected because it is self-serving, unrealistic, patently unfair to incumbent licensees, and offers the false prospect that adoption of the proposal will speed rather than delay deployment of new services to the public.

New Licenses to be Assigned at Auction. With respect to EBS auctions, there is substantial support for auctions to proceed on the basis of BTAs, on a channel-group-by-channel-group basis, with LBS/UBS channels being treated separately from MBS channels. CTN and NIA share the concern of several commenters that the Commission's proposal to force un-transitioned EBS channels to auction (with bidding credits) does not properly account for spectrum lease rights in such channels, reinforcing CTN's and NIA's view that the whole alternative/auction process put forth by the Commission is unworkable and should not be adopted. CTN and NIA also disagree with two auction-related proposals by IMWED – the proposal to prohibit commercial entities from providing funding for EBS auction bidders, and the proposal to use designated entity provisions in EBS auctions.

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The Catholic Television Network ("CTN") and the National ITFS Association ("NIA"), by their attorneys, hereby submit these joint reply comments in the above-captioned proceeding.[1]

[1] *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*, Report and Order ("*Report and Order*") and Further Notice of Proposed Rulemaking ("*FNPRM*"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004). A summary of the *FNPRM* was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,048. Comments in response to the *FNPRM* were filed on January 10, 2005.

I. Grandfathered E and F Channel Stations

With respect to the transition of grandfathered E and F group ITFS licensees to the new band plan, CTN and NIA proposed the use of the same split-the-football approach that is being used to establish Geographic Service Areas ("GSAs") for all other ITFS and MMDS licensees.[2] Under this approach, any overlap between a grandfathered ITFS licensee's PSA and a MMDS lottery winner's PSA would be divided by a chord drawn between the intersection points of the licensees' previous 35 mile PSAs. Each licensee would then have rights to operate free of the former grandfathering restrictions within their own exclusive GSAs. Similar solutions were proposed by numerous other parties in this proceeding including the Wireless Communications Association International, Inc. ("WCA"), Clearwire Corporation ("Clearwire"), and Red New York E Partnership, the E group MMDS lottery winner in New York.[3]

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[2] *See* Comments of CTN and NIA filed January 10, 2005 at 5 "(In the first instance, CTN and NIA believe that co-channel MDS lottery winners and grandfathered ITFS licensees should be encouraged to resolve matters among themselves through voluntary settlements.…In situations where voluntary settlements cannot be reached, CTN and NIA believe that the most equitable solution is simply to use the same "split the football" approach that is being used to establish Geographic Service Areas ("GSAs") for all other ITFS and MDS licensees."). For purposes of clarity and consistency with the terminology used in the *FNPRM*, these reply comments sometimes refer to "ITFS" and "MMDS" channels as opposed to the renamed "EBS" and "BRS" channels.

[3] *See* Comments of WCA filed January 10, 2005 at 27 ("With the adoption of the new bandplan, the move to geographic licensing and the adoption of associated rules to provide interference protection without site-licensing, BRS and EBS licensees alike will be amply protected, and thus there is no longer any need to impose restrictions on grandfathered E and F group EBS licensees."); Comments of Clearwire filed January 10, 2005 at 2 ("Clearwire supports the comments of the WCA with respect to … lifting restrictions on grandfathered E and F-groups;"); Comments of Red New York E Partnership filed January 10, 2005 at 5-6 ("Red New York E strongly recommends to the Commission that it adopt no special technical, interference or service rules affecting grandfathered E and F-channel stations and nearby E and F-channel MDS stations, but rather apply the rules contained in the *R&O* and *FNPRM* to these stations."); Comments of School Board of Miami Dade County Florida filed January 10, 2005 at 3 ("Licensed ITFS operation on the E and F group are … protected from interference. They should remain protected from interference.…These stations should be [sic] have recognized geographic service areas, just like ITFS stations licensed on other channels."); and Comments of Trans Video Communications, Inc. filed January 10, 2005 at 17 (proposing that, where settlements are not possible, the Commission use the split-the-football approach and "allow both ITFS and MDS to transition to the new regime. Such an approach would be the most equitable and least violative of the grandfathered ITFS licensee's longstanding spectrum rights.").

One party, NY3G Partnership ("NY3G"), the F group MMDS lottery winner in New York, has asked the Commission to adopt special requirements to address what it describes as a "unique" situation where there are substantial PSA overlaps between grandfathered ITFS licensees and co-channel MMDS licensees.[4] CTN and NIA oppose NY3G's suggestion. As a threshold matter, it is not entirely clear that the situation in New York is unique. More importantly, whether the New York situation is unique or common is irrelevant because the split-the-football approach proposed by CTN and NIA offers an equitable solution in *all* cases where there are PSA overlaps between co-channel licensees.[5] Thus, from a policy perspective, there is no need to adopt special requirements to address substantial overlap situations.

NY3G makes the untenable argument that the split-the-football approach should not be used because grandfathered ITFS licensees do not have PSAs.[6] The Commission's existing rules and prior Commission decisions make it *abundantly clear* that *all* ITFS licensees, including grandfathered ITFS licensees, have PSAs.[7] With the exception of

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[4] According to NY3G, the problem of conflicting spectrum rights of co-channel licensees "appears to be unique" to the F group channels in New York City. NY3G Comments at 5. NY3G states that there "is no other market in the country where there is a continuing situation between grandfathered ITFS licensees and co-channel MMDS licensees and certainly none where the ITFS licensee also uses its co-channel facilities solely as repeaters, without any need to do so." NY3G Comments at 3. NY3G has asked that the Commission address this unique situation by requiring "grandfathered ITFS licensees to operate on a secondary, non-interference basis to co-channel MMDS licensees in markets where the co-channel licensees continue to have substantial overlapping service areas and where the grandfathered ITFS licensee has other ITFS channels capable of serving the registered receive sites of its grandfathered facilities." NY3G Comments at 7. This is tantamount to revocation of the grandfathered ITFS licensee's license.

[5] *See* CTN and NIA Comments at 6 ("This approach works equally well irrespective of the degree of overlap among ITFS and MDS licensees. Even in situations where there is a nearly complete overlap of PSAs, this approach yields rough justice.).

[6] NY3G Comments at 17-19.

[7] *See* 74 C.F.R. §74.903(d) ("Each authorized … licensee must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area … An ITFS entity which did not receive protected service area protection prior to September 17, 1998 shall be accorded such protection by a cochannel or adjacent channel applicant for a

NY3G, virtually every party filing comments in this proceeding understands this regulatory paradigm.[8]

NY3G also argues that the split-the-football approach should not be used because "bifurcated service areas would not be conducive" to the deployment of broadband services.[9] This is utter nonsense. The entire *Report and Order* in this proceeding is premised on the establishment of bifurcated service areas known as GSAs. The fact is that GSAs are just as conducive to the deployment of broadband services in New York as they are to the deployment of broadband service in the rest of the country. Indeed, even in situations where the size of a newly-formed GSA is relatively small due to the existence of overlapping PSAs, it is entirely feasible to launch a viable commercial broadband service.[10]

CTN and NIA believe that adoption of the split-the-football approach is consistent with the recommendations made in an economic study (the "Hazlett Study") which accompanied NY3G's comments.[11] The Hazlett Study found that sharing arrangements

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new station or station modification, …"). *See also Alliance for Higher Education*, DA 04-3883 (rel. December 13, 2004) at ¶ 3 (granting waiver to allow assignment of certain E and F ITFS licenses and recognizing that two short-spaced licensees on the channels, one ITFS and one MDS, both had PSAs which were grandfathered "with respect to each other").

[8] *See e.g.*, Red New York E Partnership Comments at 3-4, note 8 ("no special rule is called for with regard to two stations who's [protected service] areas overlap each other…"); WCA Comments at 27 ("[I]n those cases where the protected service area of a grandfathered E or F group EBS licensee overlaps that of a cochannel BRS station and the parties are unable to agree to a voluntary designation of service area boundaries, the Commission should grant the grandfathered EBS station and cochannel BRS station exclusive GSAs in accordance with the new rules designed for 'splitting the football.'").

[9] NY3G Comments at 19.

[10] *See e.g.*, Red New York E Partnership Comments at 4 (indicated that the presence of overlapping PSAs significantly constricts its GSA in New York to a long, relatively narrow area that is almost rectangular in shape. "Despite these constrictions, it would be entirely feasible … to provide a mobile/data phone service in the GSA, even without cooperation from adjoining GSAs.").

[11] *Efficient Rights Assignments in the 2.5 GHz Band*, Thomas W. Hazlett, Manhattan Institute for Policy Research The Wharton School, University of Pennsylvania, January 10, 2005.

among grandfathered ITFS licensees and co-channel MMDS licensees have created ambiguity, which has impeded negotiations and service deployments in the 2.5 GHz band.[12] The Hazlett Study stressed the importance of better defining spectrum use rights and suggested that the Commission "seek to *assign clear rights* to the parties that will make most beneficial use of them."[13]

Adoption of the split-the-football approach advocated by CTN, NIA, WCA and other parties will put an end to the long outdated grandfathering scheme for the E and F group channels – a scheme which has created a standoff among licensees on both sides of the ITFS/MMDS divide. Adoption of the split-the-football approach also will ensure that rights of grandfathered ITFS licensees and co-channel MMDS licensees alike are clearly delineated going forward. This, in turn, will provide licensees on both sides of the ITFS/MMDS divide with the regulatory clarity they need to proceed with the deployment of new services.[14]

The Hazlett Study suggests that the "most beneficial" use of the New York channels is a *commercial* use.[15] It also suggests that, in New York, commercial use of the F channels would "provide social benefits far in excess of those currently delivered" by educators.[16] In essence, the Hazlett Study posits that the commercial services to be

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[12] Hazlett Study at 12.

[13] Hazlett Study at 12-13 (emphasis added).

[14] *See* Hazlett Study at 12 quoting from the Commission's Spectrum Policy Task Force Report ("[A]ll spectrum users require clear rules governing their interactions with the Commission and other spectrum users. Regardless of how or to whom particular rights are assigned, ensuring that all rights are clearly delineated is important to avoiding disputes, and provides a clear common framework from which spectrum users can negotiate alternative arrangements.").

[15] Hazlett Study at 13.

[16] Hazlett Study at 15.

offered by NY3G are better for society than the services offered, and to be offered, by the grandfathered educational licensee on the F group. Fortunately, the Commission has already determined that educational services should not be displaced in favor of what some describe as "more beneficial" commercial services.[17]

As the Commission has recognized, EBS spectrum is used to provide important services that would otherwise not be available to the public. In its comments, the ITFS licensee on the New York F group has indicated that the channels are used for educational and instructional programming for children, adult education, and a host of other community services.[18] Upon transition to the new band plan, all grandfathered ITFS licensees will be able to use their channels for the provision of broadband services that are so badly needed in education.[19] Thus, the transition to broadband will benefit not only consumers through commercial applications, but, students and adult learners as well.

Finally, NY3G argues that because the Commission has forcibly relocated incumbent licensees in other bands, it should not hesitate to do so here.[20] In making this argument, NY3G completely ignores the fact that the Commission, in *this* proceeding,

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[17] *See e.g., Report and Order* at ¶ 152 ("The record demonstrates that the EBS service provides critical educational services such as web-based and streaming video for instruction in adult literacy and basic skills, emergency medical and fire services, law enforcement, and corrections.").

[18] *See* Trans Video Communications, Inc. Comments filed January 10, 2005 at 3.

[19] *See e.g., U.S. Department of Education, Office of Educational Technology, Toward a New Golden Age in American Education: How the Internet, the Law, and Today's Students Are Revolutionizing Expectations*, Washington D.C. (2004) at 45 ("There is no dispute over the need for America's students to have the knowledge and competence to compete in an increasingly technology-driven world economy.") and 42-43 ([B]roadband access 24 hours a day, seven days a week, 365 days a year could help teachers and students realize the full potential of this technology … [Schools should] [e]ncourage that broadband is available all the way to the end-user for data management, online and technology-based assessments, e-learning, and accessing high-quality digital content.").

[20] NY3G Comments at 12-14.

has already made it very clear that it does not intend to forcefully move any ITFS licensee off its channels:

> We emphasize, however, that we do not intend to evict any incumbent licensees from the affected band if they have been in compliance with our rules and continue to comply with our rules when we modify or augment them nor do we intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, we anticipate that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.[21]

For all of the foregoing reasons, the Commission should not adopt special requirements to address situations where there are substantial PSA overlaps between grandfathered ITFS licensees and co-channel MMDS licensees.

II. Performance Requirements

CTN and NIA supported the adoption of substantial service performance requirements for EBS licensees, called for leeway in the application of those requirements for the first five years after transition, and proposed two safe harbors for EBS licensees (in addition to those that will be applied generally to licensees the 2.5 GHz band).[22] In situations where EBS licensees do not fall within one of the two specified safe harbors, the Commission was urged to evaluate licensee performance on a case-by-case basis.[23] The record reflects substantial support for these proposals.

WCA, Sprint, Nextel, BellSouth, HITN and IMWED support the notion that there should be some sort of automatic renewal grant, or presumption of renewal, for at least

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[21] *2003 NPRM and MO&O* at ¶ 2.

[22] CTN and NIA Comments at 7.

[23] *Id.*

five years after transition.[24] Several safe harbors were proposed, including those generally applicable to Part 27 licensees, and those that would be available to licensees serving rural areas, niche markets and providing specialized or technologically sophisticated services.[25] All of these safe harbors make sense, given the present uncertainty of how the band will be used following transition. Indeed, CTN and NIA expect that different, but equally valuable, services will be deployed in different portions of the band and in various places in the country, all of which will support a finding of substantial service at renewal.

The record also supports the notion that, apart from safe harbors, the Commission should show flexibility in evaluating the performance of individual licensees. As the WCA persuasively points out, under Commission precedent, the primary advantage of the substantial service standard is that it is tied to the individual circumstances of each licensee.[26]

Just one commenter, Clearwire, is at odds with the commercial and educational communities' approach to substantial service standards. In an obvious effort to clear as much spectrum as possible as soon as possible for auction without regard for the unique

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[24] WCA Comments at 14; Sprint Corporation ("Sprint") Comments at 9; Nextel Communications ("Nextel") Comments at 4; Hispanic Information and Telecommunications Network ("HITN") Comments at 3; and ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") Comments at 8.

[25] *See* WCA Comments at 8 (supporting use of safe harbors already available to other Part 27 licensees) and at 9 (requesting rural safe harbors available to other licensees under the Rural Wireless R&O, Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 02-381 (rel. Sept. 27, 2004)); BellSouth Comments at 6-7 (supporting safe harbors available to other Part 27 licensees), and at 8 (supporting safe harbors for niche markets and for rural areas); Comments of Sprint Corporation at 7-9 (urging adoption of WCS and rural safe harbors); Clearwire Comments at 19 (supporting indicia of substantial service including service to niche markets, service to those with limited access to telecommunications services, and offering of specialized or technologically sophisticated premium service.

[26] WCA Comments at 6.

needs of educational licensees, Clearwire would have the Commission require all BRS and EBS licensees to show "initial substantial service" within five years, irrespective of whether their licenses are then up for renewal.[27] In this regard, Clearwire complains that the current Part 27 performance standards are "too lenient" and argues that there is no justification for different standards for fixed and mobile services.[28] Instead, within five years, Clearwire wants the Commission to require BRS and EBS licensees to provide signals capable of providing reliable broadband service to at least two-thirds of the population of the geographic area to be served.[29]

In addition to being self-serving, Clearwire's proposal is unfairly punitive and will delay – rather than expedite – service deployments in the band. At the very time Clearwire would have the Commission "diligently cancel" licenses, the wireless industry will be in the midst of a substantial and difficult transition to the new band plan. For Clearwire to insist that incumbent users achieve what amounts to two-thirds coverage of the entire county on all channels in five years, under penalty of loss of license, is unrealistic and patently unfair.

Moreover, Clearwire's proposal offers the false prospect that canceling licenses after five years and auctioning them to other potential licensees will somehow result in earlier and more substantial service to the public. In fact, adoption of the proposal would

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[27] Clearwire Comments at 9 ("EBS and BRS licensees should be required to demonstrate substantial service for the first time on the five-year anniversary of the effective date of the new rules. If substantial service cannot be demonstrated for any EBS or BRS licensee … on the five year anniversary of the effective date of the rules, the Commission should diligently cancel the licenses, issue the licensees appropriate bidding credits for their spectrum, and timely auction the spectrum to a new entrant that will deploy broadband services.")

[28] *Id*. at 15.

[29] *Id*. at 17-18.

cause substantial build-out delays as licenses are cancelled, cancellations are challenged, spectrum eventually is auctioned, the results of the auction are challenged, and, if sustained, new licensees begin, from a fresh start, the planning and build-out process that probably was already well along when the disruption first occurred. Clearwire's approach is exactly the *opposite* of what the business and educational communities need to make the new band plan and rules a success – a reasonable period of time to plan and make transitions, enter into leases, finalize business plans, confirm funding, and effectuate rational build-out strategies. Accordingly, Clearwire's proposal for an initial substantial service test within five years of the effective date of the new rules should be rejected.

III. New Licenses to be Assigned by Auction

CTN and NIA addressed several issues raised by the Commission relating to auctioning of new EBS licenses, including eligibility restrictions, timing, geographic areas, frequency blocks, and competitive bidding rules and practices.[30] While various proposals were put forward to address these issues, CTN and NIA continue to believe that the approach set forth in their comments best balances the public interest in conducting a lawful and efficient auction with the interests of both educators and commercial operators in expanding the geographic coverage of EBS service throughout the country. CTN and NIA will not reiterate their positions here, but believe that several issues deserve reply.

First, there was substantial support for the suggestion that the EBS spectrum auction should proceed on the basis of Basic Trading Areas ("BTAs"), on a channel-

[30] CTN and NIA Comments at 10-16.

group-by-channel-group basis, with LBS/UBS channels treated separately from MBS channels.[31] The WCA's approach is squarely in line with CTN's and NIA's.[32] Also supporting the use of BTAs were Sprint, Nextel, Clearwire and IMWED.[33] In addition, BellSouth, Nextel, Clearwire and IMWED support the notion of auctioning EBS spectrum on a channel-group-by-channel-group basis, with the MBS channels being considered separately from the UBS and LBS channels in each group.[34] For all of the reasons set forth in these comments, CTN and NIA urge the Commission to auction EBS white space by BTAs.

Second, WCA urged the Commission to ensure that the auction process does not inadvertently provide a vehicle for licensees to avoid their obligations under existing spectrum leases.[35] In this regard, WCA seeks to make clear that the auction process does not void existing spectrum leases.[36] This is a valid point and, quite frankly, in the view of CTN and NIA, reinforces the impracticality of forcing un-transitioned EBS licensees, many of which have valid excess capacity leases in effect, into an auction process. CTN and NIA vigorously opposed the whole alternative/auction process for transitioning to the new band plan.[37]

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[31] *See e.g.*, WCA Comments at 24-25; Sprint Comments at 4; Nextel Comments at 8; Clearwire Comments at 10; IMWED Comments at 9.

[32] WCA Comments at 24-25.

[33] Sprint Comments at 4; Nextel Comments at 8; Clearwire Comments at 10; IMWED Comments at 9.

[34] BellSouth Comments at 15; Nextel Comments at 9; Clearwire Comments at 11-12; IMWED Comments at 9.

[35] WCA Comments at 22. See also Nextel Comments at 7 and Sprint Comments at 5.

[36] WCA Comments at 22-24.

[37] CTN and NIA Comments at 16-17.

Third, CTN and NIA disagree on two auction-related proposals put forth by IMWED. IMWED suggests (as it did in earlier phases of this proceeding) that, in any EBS auction, commercial entities should not be permitted to provide funding for EBS eligible bidders.[38] CTN and NIA believe that the Commission need not and should not dictate the propriety of funding sources for EBS auctions.

It may be that the members of IMWED have been able to develop substantial financial reserves from their excess capacity leasing or other activities and believe they can participate in auctions without securing additional funding from other sources. But typically, internally-generated funding for educators to participate in auctions will be scarce, and many educators eligible to participate in future EBS auctions may be hard-pressed to use educational resources to purchase spectrum without assistance from third parties such as supporting foundations, substantial charitable donors, grant-making agencies, and, of course, excess capacity lessees. IMWED's proposal therefore appears to favor certain non-profit entities with internally available resources over educators that may have to seek funding from other sources. CTN and NIA do not believe that non-profit entities with spare funding available for bidding should generally prevail in auctions over all others.

IMWED has articulated no basis, for example, to suggest that educators relying on funding from third parties would operate their EBS stations in a less educationally-useful manner than entities that have bid using solely their own funds. Indeed, from an educational perspective, it may well be that bidders on EBS spectrum who are able to work with others to assemble third-party funds – whether they be from a foundation or other major donor through a grant or contribution, or an investment by a commercial

[38] IMWED Comments at 10.

operator interested in future collaboration under an excess capacity lease – will be able to preserve their operating funds and be in a stronger position to provide valuable educational services on the channels they successfully obtain at auction.

Similarly, allowing an EBS bidder to use third party funds from prospective excess capacity users should not skew the bidding process in such a way as to result in a winning bidder that is any less likely to utilize the spectrum effectively. Indeed, logically, an existing spectrum lease may be the best way to ensure a timely and efficient use of newly-available channels.

Moreover, it would be difficult to draft and enforce a rule that prohibits certain types of funding for auction bidders. Where is the line drawn between what is "internal" funding and what is "third party" funding? For most educators, funding comes from a variety of sources, some of which may be clearly "internal" (such as appropriated tax proceeds going to a school district), but some of which are not so clearly "internal" or "third party" (such as revenues from vending machines in school cafeterias, or revenues from leasing rooftop space to cellular companies, or revenues from the PTA). Further, at what point does funding that might have been paid to an EBS licensee at an earlier time under an already existing spectrum agreement lose its "third party" status and become available for supporting an auction bid? What about funds earned previously from or donated by some other source? Can a charitable contribution, or a government grant, or a foundation grant, given recently but without regard to auction participation, become the bidder's internal funds for the purpose of the auction? If so, given that dollars are fungible, what happens if money coming from a "third party" source is used for

traditional instruction (such as buying textbooks or paying teachers' salaries), thus freeing other "internal" funding for auction participation?

The Commission need not, and should not, go down this road. There is no basis related to any valid regulatory goal to regulate what funds are used for bidding purposes. And there is no reason for the Commission to favor one licensee over another, based on the sources of its auction bid funding.

Finally, IMWED urges the Commission to adopt designated entity provisions in EBS auctions, to favor small entities and those controlled by minorities and women.[39] While CTN and NIA certainly appreciate Congress' concern in favoring designated entities in business contexts, Section 309(j)(3)(B) is focused on "business" entities and does not apply to educational institutions, governmental agencies and non-profit educational groups. Such groups do not have "ownership" by individuals that would fit the statutory tests, defining the size of such groups would be difficult, and there is no correlation between the size of an educational entity and the likelihood of successful educational endeavors. Indeed, if anything, the more successful parties in using EBS channels for educational purposes may well be those that have more substantial resources.[40] Therefore, CTN and NIA urge the Commission not to apply designated entity analyses to EBS auctions.

[39] IMWED Comments at 12.

[40] CTN and NIA Comments at 15-16.

Respectfully submitted,

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