

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Part 1, 21, 73, 74 and 101)	
of the Commission’s Rules to Facilitate)	WT Docket No. 03-66
the Provision of Fixed And Mobile)	RM-10586
Broadband Access, Educational and Other)	
Advanced Services on the 2150-2162)	
and 2500-2690 MHz Bands)	

**TEXAS STATE TECHNICAL COLLEGE - SWEETWATER
CONSOLIDATED OPPOSITION
TO PETITIONS FOR RECONSIDERATION**

Texas State Technical College - Sweetwater (“TSTC”), pursuant to Section 1.429 of the Commission’s Rules, hereby submits its Consolidated Opposition to the Petitions for Reconsideration filed in the above-referenced docket by the Wireless Communications Association International, Inc. (“WCAI”) and Gateway Access Solutions, Inc. (“Gateway”)(collectively “Petitioners”).¹ TSTC is an EBS licensee that has filed comments at various points in this rulemaking, and which would be directly affected by the relief sought by Petitioners of the Commission’s Fourth MO&O. TSTC believes that the Commission correctly recited its previous policy regarding the duration of EBS excess capacity leases grandfathered in its Two-Way proceeding, and need not revisit or modify its conclusions.

¹ See *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, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, 23 FCC Rcd 5992 (2008), 73 Fed. Reg. 26032 (May 8, 2008) [“*Fourth MO&O*”]. On June 9, 2008, both Gateway and WCAI filed Petitions seeking partial reconsideration of the *Fourth MO&O*. This Opposition is being timely submitted with 15 days of Federal Register Notice concerning the filing of such reconsideration requests. See 73 Fed. Reg. 40348 (July 14, 2008).

TSTC, the licensee of a San Angelo, Texas EBS station, like many other EBS licensees at that time, entered into an analog video only lease with a wireless carrier in 1990.² However, according to provisions of the lease, the ten year term would not begin to run until the launch of the operators' commercial video services on the channels.³ Thus, while the licensee became encumbered in 1990 and subject to numerous obligations under the agreement, the "Term," then limited by the FCC to only ten years, according to the operator did not begin until 1998, a full eight years after the parties bound themselves under the agreement. Thus, if the Petitions are granted, TSTC's 10 year lease, if deemed still in effect, will already have spanned some 18 years, despite FCC's rules and policies in place prohibiting such a term.

The ten year lease term limit, adopted in 1985, was viewed by the Commission as "a sufficient period to allow for the construction of wireless systems," while ensuring that EBS licensees would be able to periodically revisit such leases to adjust for changed educational needs.⁴ In 1998, as part of its Two-Way proceeding, the Commission extended the permissible EBS Lease term to no more than 15 years, and grandfathered existing leases entered into before March 31, 1997, to the extent that the total length of such leases, inclusive of all renewals (even ones occurring after March 31, 1997), would not exceed the 15 year lease limit.⁵ Operators whose leases would not meet this requirement were required

² The Agreement was "made and entered" in August of 1990, and contained obligations placed upon the parties which occurred "upon execution of the Agreement".

³ Such date was to be determined by a written statement from the operator to TSTC that such commercial broadcasting had commenced. According to the operator that occurred on February 4, 1998.

⁴ *See Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service, Second Report and Order*, 101 FCC 2d 50 at ¶ 104 (1985)(adopting ten year lease limit); *Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing the Use of the Frequencies in the 2.1 and 2.5 GHz Band, Report and Order in Gen Docket 90-54*, 5 FCC Rcd 6410, 6416 (1990) (We continue to believe that a ten year term provides the wireless cable operator with sufficient time to establish its system and permits the ITFS licensee to adjust to changing educational needs, particularly in the absence of the right to readily adjust its use of airtime beyond specific narrow limits within the lease term).

⁵ *See Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to engage in Fixed Two-Way Transmissions, MM Docket 97-217, Report and Order*, 13 FCC Rcd 19112, ¶ 130 (1998); *Two-Way Order*, 13 FCC Rcd 19112, ¶ 131; *Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to engage in Fixed Two-Way Transmissions*,

to renegotiate existing leases to bring them into immediate compliance with the new rules.⁶ TSTC's Lease contained a ten year term and a provision for two automatic 10 year renewals, which the operator would have had to strike if it was to maintain its compliance with the two-way order's grandfathering policy and avoid renegotiation at that time - a step presumably taken. TSTC's lessee/operator, based on the ten year lease term did not renegotiate the TSTC lease at the conclusion of the two-way proceeding, thereby indicating to the Commission the compliance of the TSTC Lease with the Commission's grandfathering policy.⁷

Even by the Operator's reckoning, its ten year lease would have expired in February of this year, a full 18 years after its execution. However, in letters recently received by TSTC from that operator, the operator appears to be confused that it had a 15 year term extending to 2013 (16 years after the grandfathered cut-off date), and moreover due to the Commission's new policy allowing for 30 year leases, should have an additional 20 years on that lease until 2028.⁸

While, TSTC understands the Commission's hesitancy to involve itself in individual contractual matters, this issue is not raised to seek Commission resolution of the matter, but instead to demonstrate the potential for confusion or artful interpretation of leases in light of progressively changing Commission Policies. The Commission must be extraordinarily careful to make its policies extremely clear, especially where the Terms of existing leases and important Commission policies are

Report and Order on Reconsideration, MM Docket 97-217, 14 FCC Rcd 12764, ¶ 60-61; Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to engage in Fixed Two-Way Transmissions, Report and Order on Further Reconsideration, MM Docket 97-217, 15 FCC Rcd. 14566, 14569-70 ¶ 11 (2000).

⁶ See *Report and Order on Reconsideration, MM Docket 97-217, 14 FCC Rcd 12764, ¶ 61 & n.111; Report and Order on Further Reconsideration, MM Docket 97-217, 15 FCC Rcd. 14566, 14569-70 ¶ 11 (2000).*

⁷ Any argument to the contrary, advanced now by the operator, at the very least, would constitute a lack of candor and a violation of the Commission's requirements in the two-way order.

⁸ While in fairness, following the recent renewal of TSTC's license, the operator has offered to modify some of the lease terms to ensure compliance with newer Commission rules (principally to give itself more flexible use of leased capacity). It sees the proposed revision as a continuation or renewal term for an existing 30 year lease. TSTC has indicated its willingness to negotiate a new lease, and hopefully the parties will be able to work the matter out informally.

at issue. Over the years the Commission has seen the mutual benefit of allowing educators to lease their excess capacity to wireless operators, but has always been careful to ensure either that such leases be of limited duration, or that educational licensees be given regular opportunities to revisit their leases to adjust for changing educational service needs. While it may be that TSTC eventually will have to resort to the Texas State Courts to resolve the matter, such an expensive and unusual step should not be seen as a natural outgrowth of Commission policy changes. Simple clarity on the part of the Commission and the resolution to enforce policies once adopted will provide operational and contractual certainty to both licensees and operators.

Accordingly, the Commission must not yield to this new outcry for a reinterpretation of its former lease term limitation policy and the policy under which old pre 1997 leases have been grandfathered. Ten year leases should not be allowed to be magically transformed into 15 year leases, 30 year leases or never ending leases just because the Commission elects to change its lease term policies. The Commission's special relief to operators during the two-way proceeding was limited in nature, but allowed such lessees to obtain many years of benefit from existing leases that they otherwise would not have had. There is no need to now reinterpret that policy to allow these grandfathered leases to extend for a potentially unlimited time into the future, in contravention of the purpose of the Lease limitation policy.

Respectfully submitted,

TEXAS STATE TECHNICAL
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July 29, 2008

CERTIFICATE OF SERVICE

I, Evan Carb, hereby certify that copies of the foregoing "Texas State Technical College - Sweetwater Consolidated Opposition To Petitions For Reconsideration" were served this 29th day of July, 2008 on the following parties via first class mail of the United States Postal Service, postage prepaid, at the following addresses:

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A handwritten signature in black ink, appearing to read "Evan Carb", is written over a horizontal line.