

**Before the
Federal Communications Commission
Washington, D.C. 20054**

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 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
)	
Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands)	IB Docket No. 02-364
)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems)	ET Docket No. 00-258
)	

Comments of Myers Lazrus

Richard S. Myers
Jay N. Lazrus

Myers Lazrus
1220 19th Street, NW, Suite 500
Washington, DC 200036
(202) 546-8023

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Summary

The Educational Broadband Service (EBS) represents the largest band of spectrum set aside for educational entities. The Commission should adopt rules for issuing additional EBS licenses in a manner that gives all educational entities, large and small alike, meaningful opportunities to acquire such licenses.

The FCC should not auction EBS licenses. It is fair to assume most EBS eligible entities do not have authority to bid for spectrum licenses at present, and prior auctions demonstrate a very low level of participation by educational entities. Auctions may create scenarios that do not serve the public interest. EBS licensees/lessors may negotiate bid finance agreements, turning the auction into a contest for rights to acquire spectrum for the purpose of leasing it to commercial operators rather than delivering educational programming. Especially for smaller entities the costs associated with the auction “learning curve” and funding bids would defeat any practicable feasibility of participating in an auction. Allowing bidding consortia could create conditions that pit different, exclusive groups against each other, for example a state education consortium against a private one, or a religious-oriented one against non-religious one, with state-funded consortia the likely winners in most if not all cases.

The Commission should ask Congress to exempt the EBS from auctions. If such an exemption is obtained, the Commission should license EBS using a point system to resolve mutually exclusive (MX) applications for 35-mile Geographic Service Areas (GSAs) filed during a filing window, similar to the point system previously used (when the service was known as ITFS), and to similar point systems used for awarding non-commercial educational broadcast licenses. The FCC should reject the alternative of issuing one EBS license to each State.

If Congress does not exempt EBS from auctions, the frequency coordinator alternative should be adopted. Applications for 35-mile GSAs could be filed at any time. Limits on the number of channels and sites that an applicant can request at one time should apply, as they do to applications in the Private Land Mobile Radio Services.

If the Commission does auction EBS licenses, it should structure the auction in two phases. In Phase I of the EBS auction, applicants would file applications proposing 35-mile GSAs. A localism requirement would apply requiring that applicants have a presence in their proposed area of operations. A settlement window would be established to allow MX applicants to file engineering amendments and reach settlements, as is done for the MX applications in other services. After the settlement window closes, the Commission would announce the amounts and due dates for upfront payments. In the auction, bidding credits would be available for “small,” “very small” and “low revenue” institutions. As an alternative to bidding credits, the Commission could designate two of the five EBS channel groups as open for bidding to any eligible bidder, and designate one channel group as set aside each for “small,” “very small” and “low revenue” institutions. Phase II of the EBS auction would take place five days after Phase I was completed. The licenses for Phase II would be Cellular Market Areas (CMAs) with no localism requirement, but with bidding credits or set asides. In any EBS auction, participation should be limited to educational institutions. The auction should be conducted by channel group with eligibility limited to one channel group per licensee.

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To: Office of Commission Secretary)	

Comments of Myers Lazrus

The law firm of Myers Lazrus herby submits comments in the rulemaking the Commission has initiated to address how the agency should license spectrum in the EBS for “white space” areas which are currently unlicensed.¹

¹ *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*, FCC 08-83, released March 20, 2008 [hereinafter referred to as “Second FNPRM”].

I. Introduction

The Commission is to be commended for the successful transition in recent years of existing 2.5 GHz licensees in the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to a new band plan while resolving a host of complex issues in a manner that preserves and enhances the spectrum set aside for educational entities.

The priority in the current rulemaking should be to ensure that future licensing opportunities in the EBS are available to the widest range of educational entities, and such opportunities are meaningful for small and large entities alike.

As discussed in the *Second FNPRM*, it appears that the Commission, absent new legislation, is statutorily required to use competitive bidding to resolve cases of mutually exclusive (MX) applications for new EBS authorizations. We applaud the Commission for recognizing the drawbacks to auctions in which non-profit educational entities are bidders, and for proposing alternatives.

II. Comments

A. What's At Stake

Arguably, the EBS is the most unique wireless service licensed by the Commission, representing the largest band of spectrum set aside for educational use. Given the nation's high priority to advancing education, the value of the EBS, above all, should be seen in terms of implementing and delivering specific programs for education, not in terms of lease payments licensees can receive from commercial operators that use "excess capacity."

Section 27.1214(b) of the Commission's rules allows an EBS licensee to lease up to 95% of its authorized spectrum capacity to commercial operators. This liberal leasing provision presents a risk that, by auctioning EBS licenses, the "value" prospective bidders place on the

licenses may be driven by their projected financial rewards of spectrum leasing rather than by the value EBS adds to education delivery systems and technologies.²

In the past, when the EBS was known as the Instructional Television Fixed Service (“ITFS”), the Commission used a comparative point system to award these licenses. The factors which determined which applicants received licenses included localism and how applicants actually proposed to use the spectrum.³ But auctions involve one determinative factor: money. By definition, those willing to risk the most money in an auction win and, as shown later in these comments, “bidding credits” in spectrum auctions make little or no significant difference.

At stake in the current rulemaking is the opportunity for potentially hundreds if not thousands of educational entities to acquire EBS licenses to advance their educational missions, an opportunity smaller entities likely will lose in a spectrum auction that is not tailored in a way to accommodate the uniqueness of local, non-profit educational entities.

B. Specific Comments

1. The FCC should not auction EBS licenses.

The Commission put forth a series of questions regarding how it should license the EBS white space. It asked, for example, whether EBS eligible entities, in general, have the authority to bid for spectrum licenses, observing that, “Typically, institutions, whether public or private, are limited by charters, constitutions, by-laws, ordinances, or other laws, and we are concerned that large numbers of EBS eligible entities might not be able to effectively participate in a spectrum auction.” *Second FNPRM*, ¶189.

² A recent search of the FCC’s license database generated approximately 3,350 active EBS authorizations, including licenses and leases. Without leases, the search generated approximately 2,350 authorizations, meaning that approximately 1,000 EBS licenses are subject to leases, or approximately 40% of EBS licenses.

³ See 47 C.F.R. §74.913 (1998).

The Commission's concern is well-founded. It is fair to assume that most EBS eligible entities do not have specific authority to bid for spectrum licenses at present although, in general, there are ways they may obtain such authority. The experience of prior auctions demonstrates, however, a very low level of participation by educational entities. In 17 auctions the Commission conducted for broadcast authorizations in various services (AM, FM, TV, MVDDS, DBS) over the past dozen years, only one of those auctions (Auction 37 for FM broadcast authorizations held in 2004) included universities as qualified bidders, and even then they numbered only two among 456 such bidders.⁴

On the one hand, it may not be surprising that educational entities have not participated in commercial broadcast spectrum auctions, given the broadcast channels reserved for noncommercial educational use. On the other hand, educational entities are eligible to hold commercial broadcast licenses and eligible to participate in such auctions.⁵ That they have not chosen to do so could be the result of lacking knowledge about the opportunity or, once they do become knowledgeable, of being deterred by the costs associated with expending (risking) resources on a complex auction process that may be for naught. In any case, when it comes to Commission auctions, educational entities by and large stay home. If the Commission proceeds to auction EBS white space without special accommodations for local, non-profit educational

⁴ See *Auction of FM Broadcast Construction Permits - 456 Bidders Qualified to Participate in Auction No. 37*, Public Notice, DA 04-3252, released October 18, 2004.

⁵ See *Report And Order, In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, MM Docket No. 95-31, released April 10, 2003, FCC 03-44, at note 33 ("Given that the Commission's rules do not prohibit commercial stations from airing noncommercial educational programming, we agree ... that a nonprofit educational organization could acquire a commercial broadcast station license through competitive bidding and use that license to provide noncommercial educational programs.")

entities, there should be little doubt that many such entities – especially newcomers to EBS with little money or experience – again will stay home.⁶

Auctions may create scenarios that do not serve the public interest. One could foresee existing EBS licensees/lessors negotiating with commercial operators in advance of the auction. Indeed, an early commenter in this proceeding has already suggested that existing EBS licensees might re-negotiate lease payments from existing lessees to finance bids.⁷ EBS licensees thus could be expected to enter into “lease option agreements” tied to bid financing provided by commercial operators. Knowing what lease payments an EBS license can fetch from a commercial operator (and perhaps what a commercial operator has already agreed to pay) may end up driving, if not actually funding, a licensee’s bid. Such a result could be further magnified if auction participants are permitted to form bidding “consortia” which negotiate with commercial operators, in effect conducting their own “auction” to see which operator offers the most money for guaranteed access to spectrum won at auction. Not only does this scenario skew the auction in favor of existing EBS licensees that have existing relationships with commercial lessees, but also turns the auction into a de facto contest among commercial lessees to see which advances the most money in service of what should be a secondary purpose for EBS spectrum, i.e., commercial leasing.

The Commission’s “designated entity” rules might be modified to prohibit such activities, but the agency should carefully weigh the burdens to prospective bidders and to the Commission of adding more complexity to an already complex process and then having to police those new

⁶ One early commenter in this proceeding has stated as much. *See Comments of North Carolina Association of Community College Presidents*, filed August 8, 2008, p. 2 (“[P]ublic education institutions generally lack the authority to enter into such auctions, and in most cases do not have the financial resources and expertise required to participate in such auctions.”)

⁷ *Id.* (“It is likely that [EBS auctions] would result in the necessity to re-negotiate existing spectrum leases to obtain financial and technical resources from the commercial operators who lease portions of the spectrum.”)

safeguards. As shown later in these comments, there is a way to structure an EBS auction that avoids such issues and gives first priority to creating, and maximizing, an opportunity for all educational entities to acquire EBS licenses and use them for the primary purpose of delivering educational programming and services.

Especially for smaller entities the costs associated with the “learning curve” and funding spectrum bids, as well as the potential costs of creating or joining a consortium to bid for very large Basic Trading Areas (BTAs), for many smaller entities would defeat any practicable feasibility of participating in an EBS spectrum auction.

The Commission asked whether EBS eligible entities, if they have the authority to bid for spectrum, does that authority include bidding for spectrum outside of their respective jurisdictions, and whether educational institutions would be able to competitively bid for BTAs, given that school districts are usually smaller than counties, while BTAs can be very large and frequently bisect state boundaries. *Second FNPRM*, ¶189. Those questions, however, are perhaps best answered by another question – why would an educational entity want to bid for a license to serve an area outside its jurisdiction, let alone a very large BTA license that bisects state boundaries? One rational answer, and perhaps the only one, is that the educational institution, after winning such a license, could lease the spectrum to a commercial operator. Only very large institutions, we submit, and likely only those with existing EBS licensees, would even consider ever attempting to implement such a plan.

The Commission then asked, if EBS eligible entities cannot bid for spectrum outside of their respective jurisdictions, but are otherwise authorized to bid for spectrum, whether educational institutions could form a consortium or some other joint entity to bid for spectrum in areas larger than their respective jurisdictions and as large as a BTA. *Id.* That small rural

carriers formed consortia that bid in the AWS-1 auction, however, should be given little weight in predicting whether educational institutions could and would do the same in an EBS auction. In the first place, those carriers are for-profit, commercial enterprises, with a wholly different financial model and set of reasons and incentives for acquiring spectrum and expending (risking) resources to do so. Furthermore, as private enterprises guided by profits and returns, they presumably can establish consortia that include and exclude members based on the dictates of their monetary contributions.

But if the same approach is taken to “consortia” of educational institutions, the Commission may end up creating conditions that pit different, exclusive groups against each other, for example a state education consortium against a private education consortium, or a religious-oriented one against non-religious one, in each case the winner decided by how much money the consortium has “pooled” to bid with. One can fairly predict that consortia of state educational institutions, given the advantage of the state’s tax base, would walk away with virtually all of the auctioned licenses, shutting out private and religion-oriented institutions.

In sum, it appears contrary to the public interest to pit non-profit educational entities against each other in a competition decided by money. Once a consortium (likely the state-funded one) wins, there may be nothing to prevent it from refusing to disaggregate, partition or lease the spectrum for the benefit of non-consortium members (or particular ones), unless the Commission adopts and enforces an additional set of “anti-discrimination” rules, adding yet another level of complexity to EBS licensing.

2. The Commission should ask Congress to exempt EBS from auctions.

For the reasons stated above, a spectrum auction -- at least one of the present mold -- should be the method of last resort for awarding EBS licenses. The *Second FNPRM* suggests

that years ago the Commission believed that Congress may not have intended to include the EBS spectrum (then known as ITFS) in an expanded auction mandate for MX applications, and therefore the Commission sought Congressional guidance on the issue and proposed that Congress exclude the EBS from the auction mandate. But it is not clear whether the agency received such guidance or otherwise further pursued the issue with Congress. *Second FNPRM*, ¶183-184.

The Commission in the past has sympathized with the educational community regarding the predicament of being mandated to resolve MX EBS applications through auction, even though auctions do not apply to other non-commercial services and the EBS spectrum was originally exempt from the auction statute.⁸ Accordingly, if the Commission has not renewed its proposal to Congress to exclude the EBS from the auction mandate, it is respectfully submitted that it should do so.

3. The Commission should resolve MX EBS applications using a point system.

If the auction exemption for EBS is obtained, the Commission should resolve MX EBS applications using the point system rules it previously had in place for such applications. Those rules, stated in former Section 74.913, “Selection procedure for mutually exclusive ITFS applications,” awarded, *inter alia*:

- four points to applicants that were “local;”
- three points for accredited schools or their governing bodies applying within their jurisdiction;

⁸ See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses, Reexamination of the Policy Statement on Comparative Broadcast Hearings, Proposals to Reform the Commission’s Comparative Hearing Process to Expedite the Resolution of Cases, First Report and Order*, MM Docket No. 97-234, GC Docket No. 92-52, and GEN Docket No. 90-264, 13 FCC Rcd 15920, 15999-16001 ¶204 (1998), *recon. denied*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12,541 (1999), *aff’d sub nom. Orion Communications, Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

- two points for applicants whose request, if granted, would result in the acquisition of four or fewer channels by that applicant within the particular area; and

- one point for a proposed weekly schedule of twenty-one or more average hours per channel per week of formal educational programming, or of forty-one or more average hours per channel per week of other ITFS programming; two points for forty-one or more average hours per channel per week of formal education programming, or for sixty-one or more hours per channel per week of ITFS programming where at least twenty-one of those hours are formal educational programming.⁹

The point system is the fairest, most straightforward method to award EBS licenses in a manner that prefers licensees that actually use the spectrum for its primary purpose. Moreover, it puts large and small entities on equal footing. The educational community already is familiar with such point systems which are used to resolve MX applications in other services, such as television and FM broadcast services on reserved channels and the Low Power FM (LPFM) Radio Service.¹⁰ If Congress exempts EBS from the auction mandate, the Commission should choose the point system method for EBS licenses as well.

4. The FCC should reject the alternative of issuing one EBS license to each State.

As an alternative to an EBS spectrum auction, the Commission proposed issuing one license to each State, and have States act as “spectrum managers.” *Second FNPRM*, ¶¶197-201. The Commission should reject this alternative. Unlike public safety services, the needs of education are local and unique to individual jurisdictions and institutions. Moreover, the ability of States to lease unused spectrum capacity to commercial operators (to recoup administrative costs) should not be a factor in deciding how best to proceed with EBS licensing. Indeed, a State might decide to lease 95% of its “license,” leaving an insufficient capacity for educational programming absent appropriate safeguards. The special rules, policies and guidelines that may be required to regulate State spectrum managers, combined with the State’s own rules and

⁹ 47 C.F.R. §74.913 (1998).

¹⁰ See 47 C.F.R. §§73.7003, 73.872, (2007).

policies, would add two levels of bureaucracy between the Commission and the educational entities -- the intended end users of the EBS spectrum -- creating more delays, inefficiencies, and costs. This alternative should be rejected.

5. The frequency coordinator alternative should be adopted if Congress does not exempt EBS from auctions.

As another alternative the Commission proposed that a frequency coordinator could assign EBS spectrum until all channels are gone, as is done in the private land mobile radio services. In this manner, the Commission believes it can avoid MX applications and thus an EBS auction. *Second FNPRM*, ¶¶202-203.

The frequency coordinator alternative is better than issuing one license to each State, and it should be adopted if Congress does not exempt EBS from auctions. To maximize the efficiency of this alternative, the Commission should designate one and only one frequency coordinator to fulfill the function of assigning EBS spectrum to applicants.

One problem with this alternative is that the frequency coordinator may be quickly overwhelmed with a massive number of applications filed the moment the new rules go into effect, and the applicants “first in line” may not put the spectrum to its best and primary use. The Commission should fashion rules to avoid that result.

First, the Commission should require an applicant to be “local” and have a presence in the proposed 35-mile Geographic Service Area (GSA) in which it is advancing its educational mission. Second, the Commission should limit applicants to applying for one EBS channel group at a time, and for no more than five GSAs absent a special showing of need. Third, the Commission should require the EBS licensee to first construct the EBS channel group for which it has received an authorization before allowing that entity to apply for another authorization. These latter two types of application limits (limit on the number of channels that can be

requested, and a requirement to build before applying for more) appear in the Private Land Mobile Radio rules.¹¹ Combined with a localism requirement, such restrictions would provide educational entities with a fair opportunity to acquire licenses for the EBS spectrum without overloading the frequency coordinator with a flood of simultaneously-filed applications.

6. If the Commission does auction EBS licenses, it should structure the auction in two phases.

For the reasons stated previously in these comments, an EBS spectrum auction should be the alternative of last resort. But if that alternative is adopted, the auction should be structured in two phases to give local educational entities a realistic opportunity to acquire licenses.

- a. Phase I of the EBS auction

- (i) 35-Mile Geographic Service Areas and localism requirement

In Phase I of an EBS auction, a filing window would be announced during which applicants could file applications for 35-mile GSAs calculated from proposed base station coordinates. The 35-mile GSAs proposed in such applications would have to protect existing EBS stations and pending applications based on existing rules.¹² The FCC could freeze the filing of applications to modify existing EBS licenses during the auction process.

Localism would be required for Phase I applications, meaning that the applicant must have a presence in the proposed area of operations in which it is advancing its educational mission.

Participation in the Phase I auction would be limited to applicants that filed applications during the filing window and have been identified as MX. The Commission follows a similar process in identifying MX applicants in other services and designating them for comparative

¹¹ See 47 C.F.R. §90.187(e)(2007).

¹² See 47 C.F.R. §27.1221 (2007).

resolution¹³ or auctions.¹⁴ One sees no reason why the Commission could not similarly identify MX applicants for the EBS Phase I auction.

(ii) Settlement window

To increase chances that applications for EBS licenses can be non-mutually exclusive “singletons” and therefore not subject to an auction, the Commission should establish a period for engineering amendments and settlements among applicants that eliminate mutually exclusivity and create at least one “singleton” application that can be granted. The Commission has followed a similar process for MX applications for broadcasting on reserved channels (which are subject to comparative consideration) and non-reserved channels (which are subject to auctions). One sees no why reason why a similar process could not be followed for EBS applications that would be subject to an auction.

(iii) Upfront Payments

After the settlement period expires, the Commission would announce groups of MX applicants and establish amounts for upfront payments. Applicants that made upfront payments would be qualified to participate in the Phase I EBS auction.

(iv) Bidding Credits

Bidding credits would be available for the Phase I EBS auction, but should be substantially larger than those used for past auctions.

Bidding credits in recent spectrum auctions (which may range from 15% to 35%), although intended to help small, designated entities compete in the bidding against larger players, have resulted in very few winners among such entities. Following the close of the

¹³ See 47 C.F.R. §73.3573(e)(2007).

¹⁴ See 47 C.F.R. §73.5000- 73.5009 (2007).

AWS-1 auction, one party calculated that designated entities won just 4% of licenses by value, as a percentage of net winning bids.¹⁵ More recently, in the 700 MHz auction, designated entities with bidding credits won just seven of the 1,099 licenses included in that auction, less than one percent.¹⁶

Clearly, 15%, 25% or even 35% bidding credits have been far too small to make any significant difference for small entities as a group. If the Commission proceeds with auctions for EBS white space and decides to use bidding credits, it should substantially increase those credits, raising them to 30%, 40% and 50% for the \$40 million revenue (“small institutions”), \$15 million revenue (“very small institutions”) and \$3 million revenue (“low revenue institutions”) categories respectively.

(v) Set asides as alternative to bidding credits

Potentially a better alternative to bidding credits would be set asides. For instance, two of the five EBS channel groups could be set aside for any size entity to bid on, and one channel group each set aside for “small institutions” “very small institutions” and “low revenue” institutions. If the reserve price was not met for any license in these latter three categories, in a simultaneous auction the license would migrate “up” to the next set aside bidding category. In this manner, entities of comparable size would be bidding against each for the same licenses, rather than trying to compete against entities for which “bidding credits” are merely the cost of doing business.

With set asides, consortia would be unnecessary and not permitted. As a further protection to keep the bidding fair, the Commission should require prospective bidders to certify

¹⁵ See Comments of Council Tree Communications, Inc., Docket 06-150, filed May 23, 2007, at p. 6.

¹⁶ See FCC News Release, “Commissioner Jonathan S. Adelstein Comments On Lack Of Diversity Among Winners of the 700 MHz Auction,” released March 20, 2008.

on their short forms that there are no agreements or understandings with any third party related to the leasing of excess capacity of any spectrum it may win. Such a restriction should apply regardless of the auction structure the Commission ultimately adopts.

b. Phase II of the EBS auction

In Phase II of the EBS auction, participation would be open to any eligible participant, with no localism requirement.

The licenses auctioned would be for Cellular Market Areas (CMAs), comprised of the 305 Metropolitan Statistical Areas (“MSAs”), 428 Rural Statistical Areas (“RSAs”), and the three licensing areas for the Gulf of Mexico. Using CMAs would maximize the opportunity for smaller entities to meaningfully participate in the Phase II auction. CMAs would make it less likely that they would have to bid on much larger service areas that may be far removed from actual areas of operations, as would more likely be the case for Basic Trading Areas, for instance. Further, CMAs would make it less likely that smaller entities that desire access to EBS spectrum would be forced to rely on post-auction partitioning and/or disaggregation arrangements involving BTAs.

The same bidding credits (or set asides) available in Phase I would be available in Phase II. The Phase II auction would commence five business days after the close of the Phase I auction. So this may occur, applications for CMA authorizations that would be included in the Phase II auction would be filed during a separate filing window one or two weeks apart from the filing window for Phase I applications. An entity may file Phase I or Phase II applications, or both, during the appropriate filing window(s). There would no settlement period for Phase II applications. The Commission would establish a separate schedule for upfront payments and reserve prices for CMA authorizations to be auctioned during Phase II.

The results of the Phase I auction would be published prior to the commencement of the Phase II auction. If a winning bidder defaults on a Phase I winning bid, the authorization would be awarded to the next highest bidder. If there is no such bidder, the authorization would become part of the CMA license won during the Phase II auction.

c. In any EBS auction, participation should be limited to educational institutions.

The Commission requested comment on whether it should prohibit non-profit educational organizations from participating in an auction, and limit bidders to EBS eligible entities that are publicly supported or privately controlled educational institutions accredited by the appropriate State department of education or the recognized regional and national accrediting organization. *Second FNPRM*, ¶190.

The Commission should adopt such a prohibition. As the Commission recognized, non-profit educational organizations have a nationwide presence. They may be expected to easily outbid smaller, local educational institutions (and even larger, publicly supported ones) regardless of the geographic size of the license area, thus dominating the use of the EBS spectrum in ways not intended by the Commission and inconsistent with the education missions of those local institutions.

d. If the Commission proceeds with auctions, it should do so by channel group.

The EBS spectrum should be licensed by channel group so that the winning bidder receives both the three low-power channels and the one high-power channel assigned to the group. This is the way the EBS spectrum currently is licensed, the way BRS channel groups were auctioned, and there is no reason to change that policy for auctioned EBS licenses.

