

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

In the Matter of	)	
	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the	)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed	)	RM-10586
and Mobile Broadband Access, Educational and Other	)	
Advanced Services in the 2150-2162 and 2500-2690	)	
MHz Bands	)	
	)	
Part 1 of the Commission's Rules - Further Competitive	)	WT Docket No. 03-67
Bidding Procedures	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules	)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution	)	RM-9718
Service and in the Instructional Television Fixed Service	)	
for the Gulf of Mexico	)	

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

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## EXECUTIVE SUMMARY

Hispanic Information and Telecommunications Network, Inc. (“HITN”) is a national non-profit organization dedicated to the education and advancement of Hispanic-Americans. HITN has devoted significant time and resources to advancing its mission using the 85 EBS authorizations it holds; and therefore HITN, keenly interested in the final allocation of available and unassigned EBS spectrum, proposes an alternative method to allocate EBS spectrum efficiently and fairly.

HITN strongly opposes suggestions to prohibit non-profit educational organizations, which have played an immensely important role in EBS and the education of our nation’s students, from participating in an auction. Any such prohibition would be discriminatory and arbitrary. HITN recognizes that competitive bidding for mutually exclusive EBS applications is statutorily required, but also acknowledges that a full scale public auction may not be fitting for many EBS eligible entities. HITN applauds the Commission for offering alternative assignment methods to a full scale auction but finds the state agency approach will unfairly favor state entities, and both the state agency and frequency coordinator approaches will create unnecessary administrative burdens, stifling the deployment of EBS.

The alternative licensing scheme HITN proposes balances compliance with Section 309(j) of the Communications Act of 1934, as amended, with the particular needs of qualified EBS entities. The proposal allocates EBS white space without superfluous bureaucracy, minimizes mutual exclusivity among applications (and thereby minimizes the need for auctions), and ensures that EBS white space authorizations go to the qualified EBS entities that value the spectrum most. Specifically, HITN proposes that the Commission allow EBS eligible entities to apply for licenses in two prioritized filing windows. The first filing window would be open to

current non-commercial EBS licensees desiring to reasonably expand their current Geographic Service Area (“GSA”) footprints into adjacent areas with identified co-channel white space. The second filing window would be open to any EBS eligible entities (whether current GSA holders or new EBS eligible entrants) to apply for discrete areas of identified remaining white space. If two or more applicants applied for the same identified white space parcel, the Commission would require a one hundred eighty (180) day settlement period to occur between the mutually exclusive applicants. If no settlement could be made, the Commission would conduct a private auction between applicants for the white space. It is HITN’s belief that this approach will be less intimidating to EBS eligible applicants, best supports the purpose of EBS, and best benefits the public interest, convenience, and necessity.

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Part 1 of the Commission's Rules - Further Competitive Bidding Procedures	)	WT Docket No. 03-67
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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
	)	

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

Hispanic Information and Telecommunications Network, Inc. ("HITN"), by its attorneys, hereby submits these comments in response to the *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> HITN does not comment on licensing Educational Broadband Service ("EBS") spectrum in the Gulf of Mexico, and instead focuses these comments on licensing available and unassigned EBS spectrum ("EBS White Space"). HITN strongly opposes suggestions to prohibit non-profit educational organizations from

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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, WT Docket No. 03-66, 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, *Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5992 (2008) ("Second FNPRM").

participating in an auction<sup>2</sup> as any such prohibition would be discriminatory and arbitrary. HITN also disfavors a full scale public auction. Although HITN is capable of participating in an auction of EBS White Space, it recognizes that many EBS eligible entities do not have the time, personnel, and/or money to participate.<sup>3</sup> HITN commends the Commission for proposing alternative assignment methods but finds the state agency approach will unfairly favor state entities and both the state agency and frequency coordinator approaches will create unnecessary layers of bureaucracy, stifling the deployment of EBS. HITN, therefore, proposes an alternative licensing scheme – one that efficiently and fairly allocates EBS White Space without superfluous bureaucracy, minimizes mutual exclusivity among applications (and thereby minimizes the need for auctions),<sup>4</sup> and ensures that EBS White Space authorizations go to qualified EBS entities that value the spectrum most. It is HITN’s belief that its approach best supports the purpose of EBS and best benefits the public interest, convenience, and necessity.

## **I. Introduction.**

HITN, founded in 1981, is a 501(c) non-profit corporation and qualified EBS entity pursuant to Section 27.1201(a) of the Commission’s rules. Its mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN holds 85 EBS station authorizations for facilities throughout the United States.

In 1987, HITN formed HITN-TV, the first and only independent 24-hour-a-day Spanish

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<sup>2</sup> Second FRNPM at ¶ 190.

<sup>3</sup> *See id.* at ¶ 187 (“Even if there is no absolute bar to an educational institution or non-profit educational organization participating in a spectrum license auction, educators may be reluctant or unable to devote time, personnel and money to such an auction.”).

<sup>4</sup> HITN responds to the Commission’s request for comment “on a mechanism for assigning EBS licenses by competitive bidding among applicants, as well as through other means that would avoid mutual exclusivity among applications, obviating any need for competitive bidding.” *Id.* at ¶ 187.

language public interest television channel in the United States. Today, HITN-TV is carried by DirecTV, Dish Network, Comcast Cable, Time Warner Cable, and Charter Communications and is presently available in over 30 million U.S. households. It remains the first and only non-profit Latino managed and controlled public interest television network offering educational content to the nation's largest minority group and to all who share an interest in Hispanic news, information, and culture.

## **II. Prohibiting Non-Profit Organizations from Participating in EBS White Space Allocation is Unjustifiable and Discriminatory.**

HITN strongly opposes the notion that the FCC “should prohibit non-profit educational organizations from participating in an auction,”<sup>5</sup> or that the Commission should limit eligible bidders to entities physically located in the geographic area to be licensed.<sup>6</sup> The FCC has already found that national educational non-profits are qualified licensees for EBS.<sup>7</sup> Many of these organizations are dedicated to serving a minority class of students that local schools do not have the resources to serve. HITN, for example, is committed to utilizing the educational capacity reservation on its current authorizations to create a nationwide WiMAX service for the purpose of promoting educational opportunities for Hispanic Americans and other minorities. HITN leverages its nationwide non-profit structure to do this. Many Hispanic American students throughout the U.S. attend local schools that lack English as a second language and other instructional classes particular to the needs of Hispanic American students. Through HITN and

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<sup>5</sup> *Id.* at ¶ 190.

<sup>6</sup> *Id.* at ¶ 195.

<sup>7</sup> The Commission's rules require EBS stations be issued “only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students *or to a nonprofit organization whose purposes are educational* and include providing educational and instructional television material to such accredited institutions and governmental organization.” 47 C.F.R. § 27.1201(a) (2007) (emphasis added).

its nationwide reach, these students can access instructional classes and material more targeted to their particular needs.

Such a prohibition greatly discriminates against HITN and other non-profit EBS holders and squarely contradicts the Commission's policy goal of providing "all potential eligible licensees with a full opportunity to access the spectrum."<sup>8</sup> There is no persuasive rationale to support the notion that prohibiting educational non-profit entities from participating in the proposed auction would lead to better service to the public and better educational use of the spectrum. To the contrary, this prohibition would potentially bar participation-- for no apparent benefit-- by EBS eligible entities that would put the spectrum to its best and highest use. Such a prohibition against participation by non-profit educational organizations would therefore be inconsistent with current FCC policy and contrary to the public interest.

### **III. While Required, Competitive Bidding Should be Minimized**

HITN has repeatedly supported prompt scheduling of an EBS White Space auction in accordance with the requirements of Section 309(j) of the Communications Act of 1934, as amended (the "Act").<sup>9</sup> Section 309(j) of the Act mandates that the Commission in the case of mutually exclusive applications grants a license or permit "to a qualified applicant through a system of competitive bidding." The Commission has previously held that the Balanced Budget

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<sup>8</sup> Second FNPRM at ¶ 188.

<sup>9</sup> *See, e.g.*, Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket 03-66 at 4 (filed Jan. 10, 2005); and Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket 03-66 at 10 (filed Sept. 15, 2003).

Act of 1997 (which expanded the Commission’s authority under Section 309(j) of the Act) “required that mutually exclusive applications for new ITFS stations be subject to auction.”<sup>10</sup>

While competitive bidding is statutorily required to resolve mutually exclusive applications, the Commission recognizes that many EBS eligible entities may not have the ability or resources to participate in an auction.<sup>11</sup> Therefore, HITN proposes the Commission minimize the necessity of auctions by adopting rules that limit mutually exclusive applications.

Specifically, HITN proposes that the Commission allow EBS eligible entities to apply for licenses as they did prior to the Commission’s freeze on filing applications for new EBS licenses in two prioritized filing windows. In brief, the first filing window (“First Window”) would be open only to current EBS licensees (not including any commercial EBS licensees) desiring to reasonably expand their current Geographic Service Area (“GSA”) footprints into adjacent areas with identified co-channel EBS White Space. The second filing window (“Second Window”), which would open at the conclusion of the First Window, would be open to all EBS eligible entities to apply for discrete areas of any identified remaining EBS White Space not sought after in the First Window. HITN’s proposal also allows for a settlement period after each window closes to further reduce the incidence of mutually exclusive applications. Section 309(j) of the Act still requires competitive bidding for mutually exclusive applications (if settlement cannot be made); but in such a case, HITN proposes the Commission hold a less intimidating, “private”

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<sup>10</sup> Second FNPRM at ¶ 183 (citing 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 ¶¶ 197-204 (1998) (*Balanced Budget Act Order*), *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).).

<sup>11</sup> Second FNPRM at ¶ 187.

auction limited only to those parties which have applied for EBS White Space in the particular BTA. HITN further proposes that the FCC prohibit financial backing of the bids or any participation in these private auctions by any for-profit entities, or for-profit partners or affiliates (“White Knights”) of the EBS bidders.<sup>12</sup> HITN’s proposal, as detailed in Section V below, balances compliance with Section 309(j) of the Act with the particular needs of qualified EBS entities.

#### **IV. The Commission’s Proposal to Utilize a State Agency Is Prejudicial to Non-State Entities and Its Proposal to Use a Frequency Coordinator Adds Unnecessary Complication**

Noting that the public interest may demand an alternative method of allocation if too many EBS licensees are prevented from participating in an auction,<sup>13</sup> the Commission sought comment on alternative methods. One option the Commission suggested is to issue “one license per state to a State agency designated by the Governor to be the spectrum manager for the entire State.”<sup>14</sup> Another option the Commission proposed is to allow applicants to submit applications for new EBS stations to certified frequency coordinators. “The frequency coordinators would review the applications and, in case of conflict, certify the earlier filed application that complies with the Commission’s Rules for submission to the Commission.”<sup>15</sup>

HITN strongly opposes state agency involvement. The Commission rightly asked whether a state license held by a state agency could “be designed to ensure that the full range of

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<sup>12</sup> By prohibiting White Knight involvement, the Commission properly prevents the undue influence of for-profit interests in this educational spectrum and maintains an equal playing field between educators with commercial backing and educators without any commercial connections.

<sup>13</sup> Second FNPRM at ¶ 196.

<sup>14</sup> *Id.* at ¶ 197.

<sup>15</sup> *Id.* at ¶ 202.

EBS-eligible entities, including educational institutions and non-profit educational organizations unaffiliated with a State, would have sufficient access to EBS spectrum.”<sup>16</sup> Clearly, the answer is no. While a state agency model may be advantageous for state universities and some public schools, it will prejudice out-of-state educational non-profit organizations and privately accredited schools. The state agency model therefore contradicts the Commission’s goal of providing “all potential eligible licensees with a full opportunity to access the spectrum.”<sup>17</sup>

Although a frequency coordinator would be a more impartial allocator than the state agency, it is completely unnecessary. Under the current GSA licensing scheme, applicants can identify and clearly demarcate available EBS White Space on any channel. Since EBS entities that place the highest value on EBS spectrum will undertake the effort to identify EBS White Space in their areas of interest, the Commission should simply place the burden on the interested applicants to specify the requested EBS White Space areas rather than having a third-party oversight entity (or Commission staff for that matter) catalog all such EBS White Space. As discussed in HITN’s proposal below, each applicant should be required to provide a clear coverage map showing the exact geographic coverage on specific channels requested, taking into consideration any existing licensed GSA(s). Placing the burden of identifying EBS White Space in areas of interest on the applicant will have the added benefit of preventing a flood of arbitrary “why not” applications by entities with little vested interest in EBS beyond the hope for a free handout of a leasable asset. The Commission’s role in evaluating an application would be as simple as verifying the existing GSAs as specified in the application, and would be facilitated by the public review of the applications by interested parties including the bordering GSA holders. A frequency coordinator would therefore be superfluous.

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<sup>16</sup> *Id.* at ¶ 201.

<sup>17</sup> *Id.* at ¶ 188.

Like the state agency approach, the frequency coordinator approach unnecessarily complicates the allocation process. Both approaches will delay the deployment of services on EBS White Space during the significant time required to create infrastructure and rules for these third-party administrators. Since the simple process proposed by HITN herein would not require additional layers of oversight, HITN recommends the Commission utilize HITN's proposal instead as detailed below.

**V. HITN Proposal.**

The Commission can minimize legislatively-mandated competitive bidding and ensure the spectrum is rapidly placed in the hands of the qualified EBS entity that values it most highly by first permitting current EBS GSA holders (not including any commercial EBS holders) to extend their licenses to the borders of any BTAs overlapping their current GSA. Much of the vacant EBS White Space adjacent to incumbent GSA holders is diminutive and irregular. It only makes sense for the Commission to first allow the current GSA holders, which have demonstrated great interest in EBS spectrum in the local area of their GSAs through maintaining regulatory compliance, to apply for the spectrum contiguous to (and a logical extension of) their current holding during the First Window. If no GSA holder applies, then the Commission may open up the application process for that EBS White Space to *any* qualified EBS entity during the Second Window.

Next, the Commission can lessen the need for competitive bidding for new EBS authorizations by minimizing the time period to apply for the authorizations. HITN proposes the Commission allow a thirty (30) day window for the current GSA holders to apply during the First Window, followed by an immediate second thirty (30) day window for *any* non-commercial EBS eligible entities (current GSA holders or new qualified EBS entrants) to apply for any

remaining EBS White Space during the Second Window. If there are any mutually exclusive applications, the Commission should require a mandatory one hundred eighty (180) day settlement period, commencing upon the close of the 30-day filing window, before going to private auction, as detailed below. Specifically HITN recommends the Commission utilize the following two-step approach:

- (1) **First Window Filing.** The Commission should open a thirty (30) day filing window (“First Window”) to accept applications by current EBS GSA holders to geographically extend their GSA to include any contiguous area of co-channel EBS White Space to the border of any BTA (a “White Space Parcel”) overlapping their current GSA.<sup>18</sup> Accepted applications should include specific geographic coverage information for the White Space Parcel requested, defining its borders in terms of all surrounding GSA and BTA borders, and include a clear White Space Parcel map showing all bordering GSAs and BTAs.<sup>19</sup> If the

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<sup>18</sup> Any GSA holder that applies and currently has less than a full channel group should automatically receive any white space areas corresponding to the other channels of that channel group that overlap its current GSA, and may seek extension of those channel areas through the process detailed for Window One. Although licensees with less than a full channel group may have been able to utilize their licenses pre-transition for broadcasting purposes, licensees now require a minimum of three channels for sectorized wireless broadband systems, as contemplated by the configuration of the Upper- and Lower- Band Segments of the new EBS band plan. It would simply be unfair for the Commission to deny such applicants the minimum additional channels available in the channel group covering part or all of the same GSA that they need to actually utilize their license post-transition.

<sup>19</sup> In the interest of rationalizing the entire 2.5 GHz spectrum band in the BTA-centric manner of the BRS BTA licensing scheme and ensuring that no small islands of EBS white space remain after this process, the Commission should deny applications that request areas that do not extend fully to the boundary of any continuous area of white space within a given BTA. Requiring applicants to apply for entire continuous areas of co-channel white space extending to the BTA border will create a definite and finite number of reasonably-sized EBS White space Parcels, thereby eliminating any difficulty and confusion with respect to auctioning or otherwise resolving the partially overlapping white space applications that may otherwise result from unchecked flexibility in areas requested.

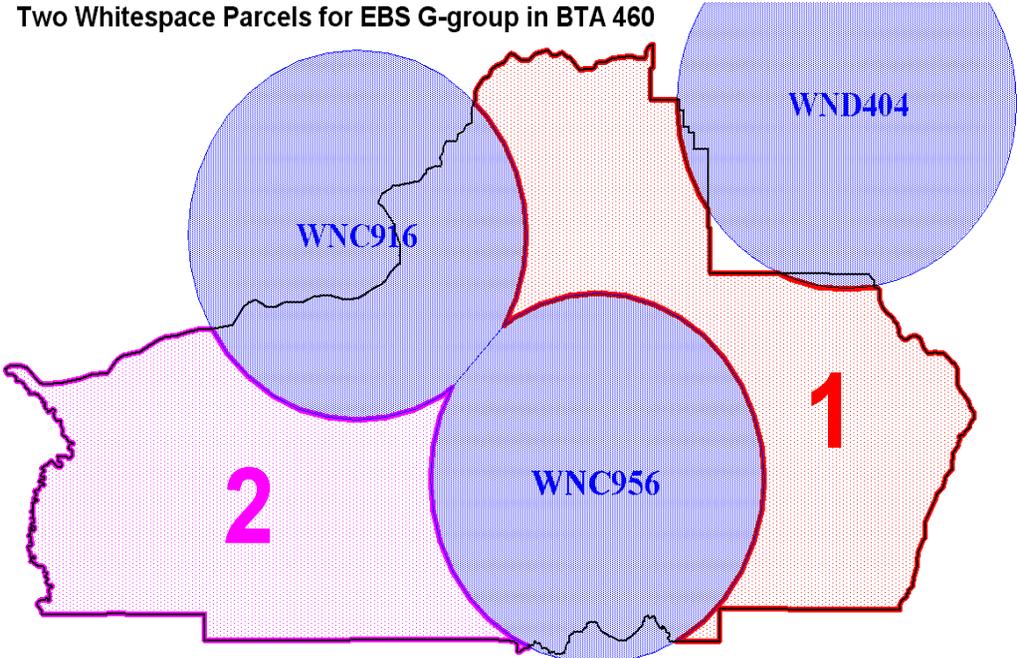
Commission receives no other such qualifying applications within the 30-day filing window for any part of the same White Space Parcel, then it should grant the sole qualifying applicant's geographic extension.

**Settlement.** If two or more current GSA holders in the BTA submit qualifying applications for any part of the same White Space Parcel within the 30-day filing window, then the Commission should require a mandatory one hundred eighty (180) day settlement period commencing immediately upon the close of the filing window. This settlement opportunity will be limited only to the mutually exclusive applicants for the specific White Space Parcel, ensuring that the settlement discussions will not be over complicated by the participation of numerous parties, which would surely result in an inability to reach resolution and a settlement.

**Private Auction.** If no resolution is made within the 180-day settlement period, then the unsettled White Space Parcel should go to a private auction. The Commission should limit participants of each such White Space Parcel auction to the First Window participants which currently hold any GSA that geographically overlaps or abuts the given White Space Parcel irrespective of the particular channel group for which they have a current GSA or for which they have applied for a White Space Parcel within the BTA. Under this proposal, while only the holder of a GSA on a particular channel group may apply for EBS White Space adjacent to that GSA and on the same channels in the BTA, if the White Space Parcel goes unlicensed through settlement, all interested GSA holders which filed

in the First Window on any channels will be able to participate in the private auction to ensure any EBS White Space on any channel in the BTA that is directly adjacent to that licensee’s GSA will end up in the hands of the party whom values it most. The following illustrates how potentially mutually exclusive G group white space within BTA 460 applied for during the First Window would be allocated under the HITN proposal.

**Two Whitespace Parcels for EBS G-group in BTA 460**



The map illustrates a scenario wherein: (1) G group holders WNC916 and WNC956 each applied for White Space Parcel #2, and (2) G group holders WNC916, WNC956 and WND404 each separately applied for White Space Parcel #1. In this example, WNC916 and WNC956 must either resolve their mutual exclusivity concerning Parcel #2 during the settlement period or they will be required to participate in a private auction for Parcel #2 (along with any other applicant for EBS White Space in the BTA on any other channel group whose current GSA overlaps or is adjacent to Parcel #2). Also, if WNC916, WNC956

and WND404 are unable to reach settlement over Parcel #1, that parcel would also be subject to private auction between those three licensees and any other applicant for EBS White Space in the BTA on any other channel group whose current GSA overlaps or is adjacent to Parcel #1.

The Commission should also make clear that no White Knights are permitted. This will ensure the White Space Parcel subject to auction ends up in the hands of the party that values it most and that no for-profit interests unduly influence the auction. Finally, as EBS holders are educational in nature and do not have the resources of commercial entities to participate in Commission auctions, the FCC should severely limit upfront payment requirements in the private auction.

- (2) **Second Window Filing.** Immediately after the First Window closes, the Commission should open another thirty day (30) filing window (“Second Window”) to accept applications from any qualified EBS entity for White Space Parcels not applied for in the First Window. The Commission should permit any qualified EBS entities to apply for any White Space Parcels within BTAs of interest, with a limit of two channel groups per BTA. Again, the burden should be on the applicant to identify the specific geographic coverage and channel information for each requested White Space Parcel, and the Commission should reject any applications for areas that do not extend fully to the boundary of the given BTA so as to minimize the creation of “scraps” or islands of remaining EBS White Space areas after this process.

**Settlement.** If the Commission receives and accepts mutually exclusive applications from qualified EBS entities within the thirty (30) day filing window, then the Commission should require a one hundred eighty (180) day settlement period commencing upon close of the Second Window.

**Private Auction.** If no resolution is made within the 180-day settlement period, then the applied-for White Space Parcel should go to private auction solely between the mutually exclusive applicants with no White Knights permitted.

By utilizing a filing window of limited duration, HITN's proposal ensures rapid allocation of vacant and available EBS spectrum. Mutually exclusive applications between GSA holders in the First Window and mutually exclusive applications between qualified EBS entities in the Second Window would be required to go to bidding under Section 309(j) of the Act, but HITN's proposal minimizes the likelihood of auction by imposing a mandatory settlement period. If the applicants must go to auction, HITN's proposed auction is tailored to the non-profit nature of EBS – requiring a private auction without the commercial influence of White Knights. Potential applicants are therefore less likely to be intimidated by the auction if it must occur.

## VI. Conclusion

The Commission should not discriminate against any eligible EBS entity. National non-profit organizations dedicated to the education of students have played an important role in the advancement of the EBS spectrum band and should not be overlooked in the final allocation of EBS spectrum. Likewise, the Commission should not discriminate against smaller EBS eligible entities also reluctant to participate in a full-scale auction of the vacant EBS spectrum. Nor should the Commission discriminate against educational institutions and non-profit educational organizations unaffiliated with a State by designating a state agency to allocate vacant EBS spectrum. HITN urges the Commission to avoid using state agencies or frequency coordinators that can slow the allocation process. In order to ensure EBS White Space is rapidly placed in the hands of the qualified EBS entities which value the spectrum most, the Commission should adopt the two step approach proposed by HITN in these comments.

Respectfully submitted,

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I, Norman Liu, hereby certify that copies of the foregoing *Comments of Hispanic Information and Telecommunications Network, Inc.* were served this 22<sup>nd</sup> day of September, 2008 on the following parties via electronic mail:

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