

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

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the 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

**REPLY COMMENTS OF BRIDGE THE DIVIDE FOUNDATION,
INC., AUBURN BROADBAND, LLC AND ROCKY MOUNTAIN
BROADBAND, LLC**

Bridge the Divide Foundation, Inc. ("Bridge"), Rocky Mountain Broadband, LLC ("Rocky Mountain") and Auburn Broadband, LLC ("Auburn") (collectively, "Joint Commenters") hereby submit their Reply Comments in the captioned proceeding.

In their Comments herein, the Joint Commenters explained that to realize the promise of ubiquitous wireless broadband using Wi-Max technology, for which EBS spectrum is targeted, an operator needs at least 30 MHz of usable spectrum, which means at least two channel groups. The Joint Commenters accordingly proposed that this proceeding implement rules which would give incumbent EBS licensees within a BTA the opportunity to bid on and receive additional EBS channel groups within their incumbent BTAs, rather than focusing only on enabling incumbents to increase coverage on their incumbent channels. The Joint Commenters continue to believe the Commission should create such a path to enabling incumbents to acquire additional channels within their current licensed service areas.

I. The Commission Should Allow an Incumbent to Apply for White Space on Any Channel Group within Its Incumbent BTA

One proposal is that incumbent EBS licensees be limited to filing an application for only one channel group within their incumbent BTA. *See, e.g.*, IHETS Comments,¹ p. 10. The Joint Commenters oppose that stance. An incumbent EBS licensee within a BTA should be allowed to file a short-form application for white space on any and all channel groups within its incumbent BTA. If an incumbent needs more spectrum and wants to participate in either pre-auction negotiations or, failing a settlement, in an auction, that incumbent should be allowed to file a short-form application for all white spaces within its BTA, so that it can dynamically bid upon whichever channel group turns out to be least expensive as the auction progresses. Limiting a licensee to seeking only one channel group would fail to place the spectrum into the hands of the entity which values it most highly and would put it soonest to productive use (*i.e.*, 4G broadband).

¹ Appendix A attached hereto identifies the comments to which Joint Commenters are replying, and sets forth the abbreviations used in the body of these Reply Comments.

II. Auctions Have Proven to Be a Boon to the Public Interest; Non-Auction Comparative Selection Methods Should Be Rejected

A number of commenters propose that the Commission use other methods of comparative selection in those cases where there is no full market settlement. *See, e.g.*, CTN Comments, pp.3-7; AASA Comments, p.11-12; Myers Comments, p.p. 6-11. The Joint Commenters oppose the use of such alternative comparative selection methodologies.

The history of various comparative selection regimes in both broadcast and early cellular licensing proceedings is a sorry chapter in the realm of telecom regulation. These comparative selection regimes -- whether broadcast comparative hearings with their preferences for local ownership which will work day-to-day at the station (and happen to be a female minority with broadcast experience), or cellular comparative hearings favoring the applicant which put forward the non-binding proposal to build the most cell sites -- amounted to seeing how many angels could stand on the head of a pin. They (and the cellular random selection regime used in the late 1980s and early 1990s) were invitations to abuse, and they never awarded the spectrum to the party which valued the spectrum the most. Rather, those comparative selection methods simply awarded the license to someone who would then conduct a private auction and sell the license in the secondary market.

In contrast, the advent of auctions has led to the award of spectrum to the parties most willing to put the spectrum to immediate use for the benefit of the public, and the rapid explosion of new and innovative services to the public. Consider, for example, the incredible public benefits of the usage of the 1.9 GHz PCS spectrum over the last thirteen years.

An example of a flawed comparative selection approach is the CTN proposal to award the white spaces only to actual school systems, and then only to the five school systems with the highest enrollment. Such a selection method bears no relation to the public interest. Non-profit

private educational foundations are required to serve local schools every bit as much as are school systems, and in fact, these private foundations have every incentive to serve multiple school systems, such as serving both parochial and public schools in a BTA. There is no rational basis for believing that CTN would better serve students as a whole within a given BTA than would established private foundations such as Bridge, Clarendon Foundation, Shekinah Network or HITN. Such a selection approach would simply provide a windfall for CTN at the expense of the public and students in general.

III. GSAs Should *Not* Be Modified or Expanded Pre-Auction

Several commenters propose one or another variety of a procedure whereby incumbent EBS licensees would expand their GSAs outward from their respective centroids, and claim the additional area without having to compete in an auction. *See, e.g.*, NEBSA Comments, pp.22-23; IHETS Comments, pp.6-9; Adams Comments, pp.4-5; HITN Comments, pp.8-13. Some of these proposals call for the incumbents to file new applications for this additional protected coverage area, some may not require applications, some propose limiting the expansion to staying within BTA boundaries, some do not, but they are all variations on a theme.

These proposals are preferable to the non-auction comparative selection methods discussed in Part II, *supra*, but they still have one major drawback – they leave incumbent licensees without any opportunity to obtain additional spectrum in order to obtain the critical mass (*i.e.*, 30 MHz) needed to support Wi-Max technology. Accordingly, Joint Commenters believe this GSA expansion approach would be inconsistent with the public interest, as currently proposed.

In the past, when the Commission has used a rulemaking proceeding to expand the protected service areas of incumbent wireless licensees, it was based upon new engineering data,

and was done to conform FCC protection criteria to the actual pre-existing reliable service areas on the ground. *See, e.g., Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 7 FCC Rcd 2449 (1992), *aff'd. sub nom. Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309 (DC Cir. 1995). In that case, the Commission found that although protected cellular service areas were based upon the composite 39 dBu contours of the licensed cell sites, the cellular customers were receiving reliable service far beyond those contours in the real world, so the rules had to be changed to conform the protected service areas to the technology.

(Otherwise, incumbent cellular carriers might have been required to reduce pre-existing levels of service to accommodate new licensees of supposed, but not actual, white space.) In contrast, here the current 35-mile-radius protection areas already conform to the reliable service areas of the technology – nobody could serve a larger area without additional infrastructure equipment (*i.e.*, additional base stations). Thus, there is no similar public interest reason here to modify or expand licensed protected service areas to the detriment of incumbents who need to add channels, rather than area.

IV. EBS Licensees Should Be Allowed to Bid with Lessee Support

Some commenters argue that EBS licensees should be prohibited from obtaining financial support from a commercial spectrum lessee in bidding at auction. *See, e.g., NEBSA Comments*, p.7; *HITN Comments*, p.6. Such a prohibition would be unwise, unworkable and contrary to the public interest.

The entire regulatory regime for 2.5 GHz spectrum is crafted around the concept of commercial operators (often also holders of the adjacent/interleaved BRS spectrum) leasing capacity from non-profit EBS licensees in order to enable those EBS licensees to fulfill their

educational mission.² Even if there were some public policy basis for departing from this regulatory regime (other than to skew the playing field in favor of those educational licensees, like HITN, already receiving a revenue stream from commercial operators), it would be difficult if not impossible to police such a departure.

Almost all incumbent EBS licensees have some sort of arrangement with one or more commercial operators with respect to their incumbent spectrum. The Commission would be hard-pressed to distinguish between a legitimate renegotiated lease for the incumbent service areas with higher payments than before (perhaps for some additional consideration like a one-year extension), on the one hand, and a “prohibited” financial support mechanism to enable the EBS licensee to bid at auction, on the other hand.

Rather than prohibiting EBS licensees from receiving auction financing from outside, commercial sources, the Commission should just require full disclosure of such financing arrangements, as the Commission typically does anyway.

V. There Should Be No Bidding Credits or Other Designated Entity Provisions

Since, by definition, all bidders would be non-profit educational institutions, there is no point in establishing any type of designated entity arrangements for the EBS white spaces auction. Designated entity rules are intended to assist small businesses. However, small

² *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*, 18 FCC Rcd 6722, 6728-29 (2003); *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*, 19 FCC Rcd 14165 (2004) at ¶14; *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*, 21 FCC Rcd 5606, 5616 (2006).

businesses are, by definition, “businesses”, *i.e.*, commercial, for-profit entities, which should not be eligible for any EBS auction.³

VI. There Should Be a Separate Construction Deadline for White Spaces Spectrum

The Joint Commenters agree with those commenters who suggest that white spaces, whether licensed following full market settlement or auction, have its own, later construction deadline. EBS licensees and their commercial lessees should be allowed to focus first on the incumbent spectrum and the current May 1, 2011 deadline, before turning their attention to white spaces. Providing a separate construction deadline for white spaces spectrum would avoid artificial dislocations, and allow an orderly roll-out of Wi-Max services nationwide. In those instances where a licensee desires to construct immediately under a white spaces license, the licensee is free to do so – there is no rule requiring a licensee to wait until the end of its construction period in any wireless service.

CONCLUSION

The Commission should allow an incumbent EBS licensee to apply for white space on any channel group within the BTA where the incumbent’s centroid is located. An incumbent should not be restricted to applying for spectrum co-channel to its incumbent license, because one channel group is insufficient spectrum for deployment of Wi-Max technology, and an incumbent should have an opportunity to acquire additional spectrum necessary to accomplish the goals of the Commission in the rapid deployment of broadband technology.

³ To the extent the Adams Comments, p.4, suggest that for-profit entities should be eligible to directly hold EBS spectrum, the Joint Commenters oppose that suggestion. Joint Commenters take no position one way or the other on EBS licensing over water in the Gulf of Mexico, so long as the edge of any “Gulf of Mexico” service area comes no closer than twelve nautical miles to the coastline.

In the absence of full-market settlements among incumbent EBS licensees within a particular BTA, the Commission should allow all incumbents within that BTA to file for and bid on white spaces on any channel group within that BTA. Auctions are by far the best comparative selection mechanism the Commission has ever developed, and the only mechanism which does not artificially distort the market to the public detriment.

Once the Commission has finished processing pending renewal and construction extension applications, so that the public can determine exactly what EBS white space remains, the Commission should subject all of that white space to the auction process, in the absence of full market settlements. There is no rationale for making a gift of white spaces spectrum to incumbents by arbitrarily expanding their existing GSAs. The rationale employed in past instances of such license modification, *i.e.*, conforming the protection area of already-operating systems to their existing reliable service areas, is absent here.

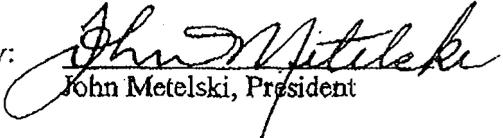
The entire 2.5 GHz regulatory scheme is predicated on partnerships between commercial operators and educators. It would be arbitrary and irrational to make an exception of the EBS white spaces, by trying to prohibit EBS licensees from receiving financial assistance from their commercial lessees for the auction process.

There should be no bidding credits, because there are no “businesses” (much less “small businesses”) in an EBS auction. Finally, there should be a separate construction deadline for white spaces spectrum, running from the date of issuance of a license for such spectrum. Such a separate construction deadline would prevent distortions and enable an orderly roll-out of Wi-Max service nationwide.

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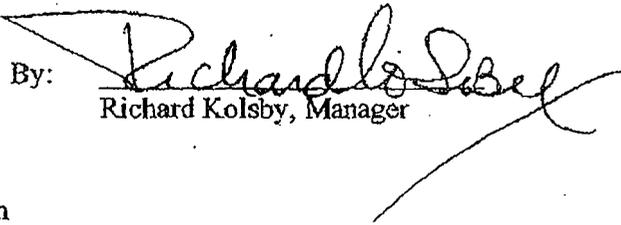
Respectfully submitted,

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Date: October 22, 2008

APPENDIX A

LIST OF COMMENTS TO WHICH REPLY COMMENTS ARE ADDRESSED

Adams Telecom, Inc. *et alia* (“Adams”)

American Association of School Administrators, *et alia* (“AASA”)

Catholic Television Network (“CTN”)

Hispanic Information and Telecommunications Network, Inc. (“HITN”)

Indiana Higher Education Telecommunications System (“IHETS”)

Myers Lazrus (“Myers”)

National EBS Association (“NEBSA”)