

**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
)	

To: The Commission

**REPLY COMMENTS OF
THE SOURCE FOR LEARNING, INC.**

The Source for Learning, Inc. ("SFL"), by counsel, submits these Reply Comments in the above-captioned proceeding.¹ As discussed below, the comments demonstrate a broad base of support for automatic "maximization" of existing Geographic Service Areas ("GSAs") and streamlined procedures for auctioning remaining Educational Broadband Service ("EBS") white spaces.

¹ *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*, 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 ("FNPRM"). SFL filed Comments on September 22, 2008. See Comments of SFL, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 ("SFL Comments").

Discussion

I. THE COMMISSION SHOULD ADOPT SFL’S PROPOSAL TO “MAXIMIZE” GSAs OF EXISTING EBS LICENSEES BEFORE ACCEPTING APPLICATIONS FOR REMAINING WHITE SPACES.

A. There is no Support for Auctioning all EBS Spectrum that is Currently Unassigned.

Commenters unanimously agreed with SFL’s view that auctioning all currently unassigned EBS spectrum would be contrary to the public interest,² and that competitive bidding should be used only where other license assignment methods have failed to entirely eliminate white space. The National EBS Association, a trade group that has long represented EBS licensees, perhaps stated it best:

Auctions, however implemented, are not an appropriate spectrum allocation tool for an educational service and are not likely to result in spectrum coming into the hands of those that can best use it. Among other considerations, sound public policy should not require educators to expend their limited resources to pay for this spectrum. NEBSA is informed that many educators – particularly local, accredited schools that used to be favored in the EBS licensing process – will not be able to participate in auctions because of either legal restrictions or the lack of financial resources that can be paid to the government for spectrum.³

A consortium of educational organizations strongly stated that “the very notion that the Commission would require schools to compete against each other for licenses and would

² See SFL Comments at 17 (discussing the “negative consequences of auctions”). See also Comments of Indiana Higher Education Telecommunication System, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“IHETS Comments”) at 17-18 (same); Comments of Bellville Independent School District, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“Bellville Comments”) at 17-18 (same). Three commenters – Broadpoint, Inc., the American Petroleum Institute and the Wireless Communications Association International, Inc. – did not address the means by which the Commission should assign licenses for EBS white space.

³ Comments of The National EBS Association, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“NEBSA Comments”) at 7. The North Carolina Association of Community College Presidents (“NCACCP”), presidents of community colleges holding EBS licenses that blanket North Carolina, confirmed that “the North Carolina community colleges would be unable to participate in auctions (due to financial and legal limitations), which would impair their efforts to provide coverage for the county or counties that they serve in the event auctions are required.” NCACCP Comments, WT Docket Nos. 03-66, *et al.*, filed Oct. 16, 2008 at 2.

give the U.S. Treasury funds that are earmarked for education is so appalling that little needs to be said against it.”⁴ Similarly, Myers Lazrus, following a detailed discussion of the problems associated with auctioning spectrum set aside for educators, concluded that “it appears contrary to the public interest to pit non-profit educational entities against each other in a competition decided by money.”⁵ The Catholic Television Network (“CTN”) agreed that “[a]ssigning EBS spectrum based on a single criterion – the highest bidder – would have questionable public interest benefits.”⁶ Other commenters cited the Commission’s desire to consider alternative license assignment mechanisms, devising plans that “would, in large part, eliminate the need for auctions in many areas.”⁷

It is rare that every commenter in a rule making proceeding favors the same position. But this is one of those cases. National trade groups, educational consortia, multi-station licensees, rural operators and holders of single EBS licenses – all agree that the Commission should, where possible, eliminate the need for auctions in favor of some alternative. The Commission thus should reject auctions where it can, in favor of an alternative means for assigning EBS white space.

⁴ Comments of American Association of School Administrators, *et al.*, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“Association Comments”) at 10.

⁵ Comments of Myers Lazrus, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“Myers Lazrus Comments”) at 10.

⁶ Comments of the Catholic Television Network, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“CTN Comments”) at 3.

⁷ Joint Comments of Bridge the Divide Foundation, Inc., *et al.*, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“Bridge Comments”) at 4. *See also* Joint Comments of Adams Telcom, Inc., *et al.*, WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“Adams Comments”) at 4 (proposing to reduce opportunities for mutual exclusivity and fraudulent activity in auctions); Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket Nos. 03-66, *et al.*, filed Sept. 22, 2008 (“HITN Comments”) at 2 (proposing alternative that would minimize need for auctions).

B. The Commission Should Adopt SFL’s Proposal to “Maximize” EBS GSAs In Order to Expedite Deployment of Wireless Broadband for Educational Use and to Save Unnecessary Costs to Educators.

Although every commenter strongly favored limiting or avoiding the use of auctions, they differed on how the Commission should define and assign white space spectrum. SFL, IHETS and Bellville each proposed a detailed plan by which the Commission would automatically expand the GSAs of existing licensees by simultaneously extending the GSA boundaries to the BTA border or the boundaries of co-channel EBS stations.⁸ In each BTA covered by a portion of any GSA, all unassigned EBS spectrum would be immediately licensed to existing co-channel licensees so that they can expeditiously deploy educational and wireless broadband services in adjacent areas.⁹ In cases where the automatic expansion of GSAs would bisect a major market or result in some other anomaly, the maximization plans proposed by SFL, IHETS, Bellville and NEBSA would afford licensees an opportunity to mutually agree to changes in GSA borders to create more viable markets.¹⁰ In addition to land swaps that modify Commission-drawn GSA boundaries, settlements also could include channel swaps that would permit a licensee in one area to acquire additional spectrum in exchange for

⁸ See SFL Comments at 6-8; IHETS Comments at 6-8; Bellville Comments at 6-8.

⁹ As the Association correctly points out, the Balanced Budget Act of 1997 requires competitive bidding where mutually exclusive applications are filed. See Association Comments at 10, *citing* 47 U.S.C. §309(j). Notably, the SFL plan would maximize GSAs *before* accepting any applications and, thus, before mutual exclusivity can be determined. Moreover, as discussed in the SFL Comments, the Commission has exercised its authority in the past to permit mutually exclusive applicants to entertain settlement discussions as a means to avoid auctions. See SFL Comments at 10.

¹⁰ See also Adams Comments at 5.

spectrum that another licensee desires. Agreements of this kind would be consistent with Bridge's plan to allow incumbent licensees to apply for additional spectrum.¹¹

1. **“Maximizing” GSAs as a First Step in the White Space Licensing Process will Expedite Service to Rural and Unserved Areas.**

A majority of commenters addressing the issue of how to assign white space spectrum agreed that the Commission should maximize existing GSAs before undertaking other license assignment procedures. Significantly, these commenters included the trade association representing EBS licensees,¹² long-time “national” and statewide EBS licensees,¹³ commercial service providers operating in rural markets¹⁴ and a small school system.¹⁵ This broad base of support demonstrates that incumbent licensees are well equipped to respond to market demand for EBS spectrum in rural and other areas where no licenses have been assigned or where incumbent licensees have had no opportunity to expand their facilities for 13 years to meet new demands and incorporate technological developments.

As discussed by these commenters, the benefits of maximizing GSAs are significant. First, automatically expanding GSAs would “immediately licens[e] white space and mak[e] it deployable throughout many BTAs, without having to undertake any

¹¹ See Bridge Comments at 5 (“[s]ome licensees may wish to expand geographic territory while others may wish to increase their spectrum holdings in a smaller area”). SFL further notes that the size, shape and location of existing licenses in the Denver BTA may create a unique situation, but SFL believes that there should be no restrictions on how full-market settlements can be fashioned.

¹² See NEBSA Comments at 22-23. The maximization process described by NEBSA would yield the same BTAs and channels where white space would remain at the conclusion of that process. The proposals differ, however, in how existing licensees would divide the existing white space (exclusive of BTAs where no GSAs are present on a given channel). SFL would not object to adoption of either approach, though it believes that SFL's proposal would be easier to implement and NEBSA's may lead to service areas that more closely relate to existing markets.

¹³ See IHETS Comments at 6-9; HITN Comments at 8-9.

¹⁴ See Adams Comments at 2, 4-5.

¹⁵ See Bellville Comments at 6-8.

new application and mutually exclusive selection process.”¹⁶ Adams stated that minimizing white space “would decrease opportunities for mutually exclusive applications.”¹⁷ SFL, IHETS and Bellville similarly observed that the maximization process would open up white spaces for deployment “instantaneously.”¹⁸ Because any remaining white space would encompass an entire BTA, applications could be filed immediately, thereby speeding licensing and deployment without the time, delay and costly engineering expense borne by educators to determine actual white space within BTAs not subject to a maximization process.

Although HITN agrees with SFL, IHETS and Bellville that existing licensees should be permitted to “extend their licenses to the borders of any BTAs overlapping their current GSA,”¹⁹ it proposes a process by which existing licensees would have the right to file applications for white space adjacent to their GSAs, and the applicants would have an opportunity to negotiate a division of the white space or some other resolution. SFL believes that, while this maximization process has merit because only interested incumbents would file for contiguous white space, it creates additional administrative requirements on licensees to file applications and the Commission to process them. By contrast, SFL’s proposal would automatically divide white space equitably among existing licensees, and afford them the opportunity to reject the expanded area.

Automatically expanding existing GSAs before proceeding with additional licensing of white space would rationalize EBS service areas in several different respects and facilitate efficient service and effective operations. As discussed by NEBSA, “all

¹⁶ NEBSA Comments at 18.

¹⁷ Adams Comments at 4.

¹⁸ SFL Comments at 14; IHETS Comments at 15; Bellville Comments at 15.

¹⁹ HITN Comments at 8.

white space remaining after the maximization process would be for specifically identifiable channels that are available BTA-wide.”²⁰ The boundaries for EBS GSAs would be “better harmonize[d]” with the boundaries of BRS licenses,” creating more uniformity in the size and shape of service areas.²¹ Moreover, as several commenters discussed, the remaining white spaces do not lend themselves to effective licensing by auction to third parties, but would be more capably served by incumbent licensees. This is because the white spaces are aptly described as “diminutive and irregular,”²² “irregularly shaped [and] small in size and difficult to serve,”²³ and “haphazard bits and pieces of non-contiguous geographic areas.”²⁴

In addition, maximizing GSAs would reduce the service-limiting effects of antenna height-benchmarking along the boundaries. As a practical matter, as more licenses are added, the number of border areas where height-benchmarking restrictions must be considered increases. This creates “seams” along GSA borders where licensees may not be able to install base stations at sufficient height to serve the public. By contrast, expanding GSAs will greatly limit the number of “seams,” allowing for service to be extended to areas that could not previously receive service.²⁵

According to NEBSA, following GSA maximization, there would be more than 200 white space licenses in 74 separate BTAs that would remain available for licensing

²⁰ NEBSA Comments at 19. As noted by NEBSA, SFL, IHETS, Bellville and Adams, prior to maximizing GSAs, the Commission should first resolve pending proceedings involving late-filed renewal applications and requests for extension of time to complete construction of facilities.

²¹ SFL Comments at 15; IHETS Comments at 16; Bellville Comments at 16.

²² HITN Comments at 8.

²³ SFL Comments at 15; IHETS Comments at 16; Bellville Comments at 16.

²⁴ NEBSA Comments at 19.

²⁵ See *id.* See also SFL Comments at 16; IHETS Comments at 16; Bellville Comments at 17.

across an entire BTA.²⁶ By contrast, auctioning all five channel groups in each of 493 BTAs would require at least 2,465 separate auctions, a number that would increase if the Commission held separate auctions for each non-contiguous white space in a BTA or if channels in a group were separated.²⁷ An auction or negotiation process cannot be managed effectively under these circumstances.

SFL appreciates that all of the commenters in this proceeding are committed to reducing and avoiding the need for auctions, whether it be through automatic maximization of GSAs or other methods. But only maximization enables fast deployment to rural and underserved areas, with a minimum of administrative oversight, and no service and antenna siting problems arising from squeezing new stations in between incumbent facilities. The Commission should therefore promulgate rules incorporating SFL's maximization plan as a first step to licensing EBS white space.

II. THE COMMISSION SHOULD ADOPT SFL'S PROPOSAL TO ALLOW APPLICANTS AN OPPORTUNITY TO SETTLE APPLICATION CONFLICTS BEFORE CONDUCTING SINGLE-ROUND, SEALED BID AUCTIONS.

Under SFL's proposal, once the maximization process is completed, the Commission would accept applications for available spectrum on a BTA basis according to channel groups. Any party eligible under Commission rules would have the right to file for white space, although an applicant could file only one application for a given

²⁶ See *id.* at 19 and Exhibit 1. This assumes that licenses would be assigned by channel groups. More licenses would be available if the Commission adopted a different approach, such as Bridge's proposal to assign the Middle Band Segment channel separate from the Lower Band Segment or Upper Band Segment channels in the channel group. See, e.g., Bridge Comments at 7.

²⁷ CTN's proposal also assumes that each channel group has only one white space area. In fact, many BTAs contain multiple non-contiguous white space areas, many of which may cover only a few square miles. It is unclear how CTN's proposal addresses these BTAs. The Association's proposal suffers from a woeful shortage of specificity on whether white areas would be defined by BTA or some other geographic area. It may be that an EBS channel on the East Coast could stretch across the country. Or, if the areas are smaller, then the Association's proposal suffers from the same defect that plagues CTN's.

BTA.²⁸ Applicants would have a certain period of time to reach full-market settlements in cases where more than one application was filed for a particular channel group in the BTA. In the absence of a full-market settlement for the BTA, the Commission would conduct a single-round, sealed-bid auction to select the licensee.²⁹

Other commenters also embraced the use of post-application settlements to resolve application conflicts.³⁰ By restricting each applicant to a single channel group in a given BTA, the number of applications would be limited and full-market settlements would be more readily achievable. This structure is much less complicated than other proposals that do not contemplate settlements as a means to avoid auctions.

Only Myers Lazrus suggested that the Commission should utilize geographic units other than BTAs for the auction of white space.³¹ However, the use of 734 Cellular Market Areas ignores the fact that BRS markets were auctioned according to BTAs and the transition process is proceeding on a BTA-by-BTA basis. The Commission should reject this proposal because it will create a lack of harmony among service areas in the 2.5 GHz band and increase the potential for interference between, for instance, BRS Channel H3 and EBS Channel G1, both of which are in the Upper Band Segment. Any reduction in auction payments resulting from smaller market areas is substantially outweighed by the benefits of auctioning white space spectrum according to BTAs.

²⁸ See SFL Comments at 9; NEBSA Comments at 23. NEBSA submitted information showing that there would be 74 BTAs where at least one EBS channel would be available. *Id.*

²⁹ See SFL Comments at 10-11; IHETS Comments at 11-12; Bellville Comments at 11-12. See also Bridge Comments at 8.

³⁰ See, e.g., Bridge Comments at 6-7; NEBSA Comments at 23-24; HITN Comments at 10.

³¹ See Myers Lazrus Comments at 17.

Conclusion

The record demonstrates widespread support for automatically maximizing GSAs to rapidly expand the availability of EBS spectrum and educational and wireless broadband services to rural and underserved areas. SFL believes its maximization plan identifies open white space quickly and easily; provides easily identified boundaries for open white space and eliminates costly and time-consuming engineering studies otherwise needed by educators to determine white space; allows any eligible entity that meets Commission requirements to hold an EBS license to apply; permits applicants to negotiate settlements with other applicants to avoid auctions; offers a way (as a last resort) for educational entities to participate in an auction; reduces the time and efforts of Commission staff to administer the application and licensing process; and furnishes a streamlined process to license all EBS white space within months to expedite needed wireless broadband deployment for education. SFL urges the Commission to adopt its proposal and the other rule changes discussed above and in the SFL Comments.

Respectfully submitted,

THE SOURCE FOR LEARNING, INC.

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By:



Robert J. Rini
Stephen E. Coran
Rini Coran, PC
1615 L Street, N.W., Suite 1325
Washington, D.C. 20036
(202) 296-2007

Its Attorneys