



June 5, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE SUBMISSION**
WT Docket No. 03-66; 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

Dear Ms. Dortch:

The National EBS Association ("NEBSA") wishes to follow up on the letter submitted June 1, 2009 in the noted proceeding by counsel for the Catholic Television Network ("CTN"), to echo CTN's comments about the efforts that CTN, NEBSA and others have put into seeking a broad-based compromise on EBS white space licensing, the enormous difficulty we have had trying to find one solution that meets the needs of all major stakeholders, and the importance for the Commission to move forward to resolve the white space proceeding even in the absence of a consensus.

NEBSA believes that the Commission needs to resolve these issues sooner rather than later, to facilitate deployment of wireless broadband throughout the country.

Background

CTN correctly states that three major approaches to licensing EBS white space were put forth in various proposals in the proceeding. However, any labels and two or three sentence summaries of so complicated a topic of necessity overlook elements and nuances of specific proposals, and arguments for or against them, so it's critical that the Commission, in reviewing these approaches, look beyond these labels and summaries and go back to the actual comments to understand them in their full context.

CTN also correctly reflects the criticisms and concerns that have been raised about the various approaches, and the effort that CTN has put into trying to come to an industry consensus.

NEBSA has also put significant effort into discussions with both CTN and other EBS industry stakeholders, and has offered a compromise proposal of its own based to a significant degree on the proposal now submitted by CTN in its June 1 filing. Unfortunately, we have been unable to move to a single position to recommend to the Commission.

How the Commission Should Proceed

NEBSA believes that, in the final analysis, in order to decide this matter, the Commission has first to decide what fundamental goal or goals it seeks to achieve in licensing EBS white space. Clearly, several of the proposals before the Commission will work – in the sense that they will ultimately result in white space being licensed to some qualified EBS entity. Just as clearly, certain proposals further particular goals more than others.

If the principal concern of the Commission at this point is to facilitate the rapid deployment of wireless broadband services throughout the United States, including in rural areas where near-term wireless deployment is not only a realistic prospect but perhaps the only near-term prospect, NEBSA's original proposal based on immediate GSA expansion should be adopted, given that white space could be licensed in many areas within months rather than years. At the same time, the interests of potential new entrants are served, as NEBSA's proposal identified 201 specific BTA-wide application opportunities for new applicants (including many in communities of considerable size, such as Dallas-Fort Worth). Under NEBSA's proposal, these areas would not be subject to incumbent GSA expansion.

On the other hand, if the principal concern of the Commission is to ensure that there are even greater application opportunities for new entrants, CTN's June 1, 2009 proposal, or something based on it, might have appeal. If the Commission determines to move in this direction, however, NEBSA urges that (1) the opportunities for filing applications in a window be modestly expanded for all applicants and (2) the Commission not focus so heavily on "localness" as a factor, which NEBSA believes is ultimately not particularly relevant to having the capability of providing service in the locale. For example, permitting up to 10 applications in a window, rather than just one, would provide a fair and reasonable application opportunity for entities such as state-wide governmental agencies or multiple campus educational institutions, who may have been waiting for years for the chance to file for more than one new station or for expansion of more than one station's existing coverage. Also, an entity with an established EBS educational service record, and the capability of serving an applied-for locale, should be no less favored to apply in a given window than another entity that just happens to have a physical presence in the area. Indeed, if the FCC were to remove the distinction between local and non-local applicants, the CTN approach can be abbreviated, saving the time and resources necessary to having two application windows, by having only one filing window.

All things considered, NEBSA believes that the Commission should opt for rapid deployment of wireless broadband, which is one reason why NEBSA continues to favor its original proposal.

Whichever way the Commission moves on these issues, however, a decision should be made soon. Deployment of wireless broadband services in the 2.5 GHz band is now at a critical point, and EBS white space in many places can and should be part of that deployment. This is particularly so given that, over the next few months, BTOP funding will be potentially available to facilitate wireless broadband projects in unserved and underserved areas. If the Commission is unable to come to a decision quickly, or if it adopts a solution that does not result in the very early licensing of white space, the BTOP funding opportunity will be lost.

Should any questions arise concerning this matter, kindly contact undersigned counsel for the National EBS Association.

Respectfully submitted,

NATIONAL EBS ASSOCIATION

By: /s/ Todd D. Gray

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