

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

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services)	WT Docket No. 10-112
)	
Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	

**COMMENTS OF
CATHOLIC TELEVISION NETWORK AND NATIONAL EBS ASSOCIATION**

In this proceeding, the Commission seeks to create consistent requirements for renewal of wireless licenses and consistent consequences for discontinuance of wireless service.¹ These comments, filed on behalf of the Catholic Television Network (“CTN”) and the National EBS Association (“NEBSA”), address how the Commission’s goals can be best achieved for the Educational Broadband Service (“EBS”) given the unique nature of EBS.

I. Introduction

CTN is an association of Roman Catholic archdioceses and dioceses that operate many of the largest parochial school systems in the United States. For decades, CTN’s members have used EBS frequencies in the 2.5 GHz band to provide educational services to children in some of the nation’s most impoverished neighborhoods, distance learning to students in rural areas,

¹ In the Matter of Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112, *Notice of Proposed Rulemaking*, FCC 10-86, (rel. May 25, 2010) (“Notice”) at ¶ 1.

training to teachers and doctors, and other services that enhance education and build strong communities.

NEBSA, established in 1978 and formerly known as the National ITFS Association, is a non-profit, professional organization of EBS licensees. The goals of NEBSA are to gather and exchange information about EBS and promote the development of EBS, to act as a conduit for those seeking information or assistance about EBS, and to represent the interests of EBS licensees and applicants. NEBSA's members include state government agencies, state universities, public community and technical colleges, private universities and colleges, public and private elementary and secondary schools, public television and radio stations, hospitals and hospital associations, and private, non-profit educational entities.

CTN and NEBSA have participated in virtually every major proceeding relating to EBS and their views have helped shape important communications policy issues concerning the use of wireless technology in education. The Commission's long-standing commitment to education, as evidenced by its EBS eligibility and educational use rules, has ensured that EBS spectrum is licensed only to qualified entities that will use the spectrum for bona fide educational purposes. This is important because spectrum that is licensed to educators themselves empowers them to use wireless technology in ways that best meet their changing needs.

With the recent adoption of a new 2.5 GHz band plan that accommodates both video and broadband services, and with the nationwide transition to the new band plan nearly complete and widespread deployment of WIMAX technology well underway, EBS is playing an increasingly important role both in the provision of wireless broadband services and in the transformation of how educational services are delivered in the United States.² The new band plan provides

² See 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

educators with access to new resources and communications networks and tools to enhance and improve students' educational experience while helping to reduce the spiraling cost of education.

II. License Renewals

The Commission has proposed that renewal requirements for numerous wireless radio services be based on the model for the 700 MHz Commercial Services Band, under which a detailed "renewal showing" would be included with license renewal applications.³ The proposed renewal showing would be quite different than, and apparently unrelated to, the substantial service showing now required of EBS licensees.⁴

The Commission also raises a question regarding the timing of implementation of new renewal showing requirements, and tentatively concludes *not* to require EBS licensees to make a renewal showing if their licenses expire on or before May 1, 2011, which is the deadline for all EBS licensees to demonstrate substantial service following the transition to the new 2.5 GHz band plan. The Commission has asked for comment on this conclusion and for suggestions on an appropriate effective date to apply its renewal showing requirements to EBS.⁵

2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) ("2004 Order"), in which the Commission modified the old video-oriented band plan and out-dated rules for EBS and the commercial Broadband Radio Service so that the 2.5 GHz band could be used flexibly for wireless broadband services, while preserving the capability of educators to continue running video services as needed.

³ Notice at ¶ 2. The Commission has also proposed to prohibit the filing of competing renewal applications by third parties and to require automatic return of spectrum to the Commission in cases where renewal applications are denied. Notice at ¶ 3. CTN and NEBSA support both of these proposals.

⁴ Notice at ¶ 22. The specific requirements proposed for a renewal showing are included in proposed new rule section 1.949(c), which would require renewal applicants to include a description of (1) the level and quality of service provided by the applicant (*e.g.*, the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying tribal land; and (5) any other factors associated with the level of service to the public.

⁵ Notice at ¶¶ 30-32.

With respect to timing, CTN and NEBSA agree that it would be premature to apply any new renewal framework to EBS licenses with ten-year terms scheduled to expire on or before May 1, 2011. The Commission previously decided that EBS licensees could discontinue service in order to facilitate the transition to the new 2.5 GHz band plan,⁶ and that EBS licensees would be required to make a substantial service showing by May 1, 2011.⁷ As a result, many EBS licensees (and the wireless broadband system operators to whom they lease spectrum) are still working on the construction and activation of post-transition transmission facilities and the resumption of operations under the new band plan. Given these circumstances, EBS licenses with terms scheduled to expire on or before May 1, 2011 should be renewed in the normal course using the Commission's existing application processes and renewal criteria.

With respect to the renewal applications filed after May 1, 2011, CTN and NEBSA do not believe that the renewal showing proposed by the Commission is appropriate for EBS licensees. Indeed, CTN and NEBSA find the Commission's proposal puzzling in that it seeks information about populations served, subscriber numbers, services provided, service commencement and interruptions, rural service, and service to Tribal lands, all of which have no bearing on the established substantive service requirements for EBS stations found in the Commission's rules. CTN and NEBSA believe that the criteria for a renewal showing for EBS stations after May 1, 2011 should directly relate to the substantive service requirements for these stations, which are the criteria for making an EBS substantial service showing pursuant to

⁶ Section 27.1234 of the Commission's rules provides that EBS licensees "may discontinue operations during the transition" to the new band plan. *See also* 2004 Order, 19 FCC Rcd 14165, at ¶ 233.

⁷ 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, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46, 21 FCC Rcd 5606 at ¶ 303 (2006) ("2006 Order").

Section 27.14(o). The Commission has already determined that the substantial service requirements encourage the highest and best use of EBS spectrum.⁸ Since the Commission just recently made these determinations and EBS licensees have relied upon this guidance, it would make little sense to change the existing rules or impose additional requirements on EBS licensees at this time.

Presumably, rather than being a snapshot in time, an EBS renewal applicant would be expected to demonstrate that the EBS substantial service requirements have been satisfied during the previous license period – in the case of the first renewal cycle, from May 1, 2011 through the end of the license term being renewed.⁹ In situations where an EBS licensee is unable to make a renewal showing consistent with Section 27.14(o), the license in question should be evaluated on a case-by-case basis pursuant to the renewal criteria specified in Section 1.949(c).

III. Regulatory Compliance Demonstration

The Commission has proposed that wireless renewal applicants be required to demonstrate regulatory compliance by filing copies of all orders finding a violation or an apparent violation of the Commission’s rules by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common

⁸ See 2006 Order at ¶ 278 (“a substantial service standard with safe harbors will ensure prompt delivery of service to rural areas, ... prevent stockpiling or warehousing of spectrum by licensees or permittees, and . . . promote investment in and rapid deployment of new technologies and services.”) The Commission also determined that the substantial service paradigm with safe harbors will “promote the availability of broadband to all Americans, including broadband technologies for educators. We also believe that substantial service will encourage the highest valued use of radio licenses and promote the economic viability of services in the band by ensuring that the spectrum is as fungible, tradable, and marketable as possible.” *Id.*

⁹ In some cases, EBS facilities may not be in use during the summer or other periods outside of the academic year when school is not in session. The Commission should confirm that such periods of inactivity will have no adverse effect on EBS license renewals as long as they do not constitute a “permanent discontinuance of service” that would trigger automatic license termination.

control with the licensee – irrespective of whether such an order relates specifically to the license for which renewal is sought.¹⁰

CTN and NEBSA respectfully urge the Commission to limit this requirement *to the specific license for which renewal is sought*. Requiring EBS licensees to obtain additional documentation would be unduly burdensome.¹¹ Moreover, the Commission’s proposal appears unnecessary as a practical matter since the documents that would have to be produced would have been originated by the Commission, and therefore, should be within the Commission’s possession.¹²

IV. Discontinuance of Service

The Commission has proposed that wireless licenses be automatically terminated if a licensee “permanently” discontinues service.¹³ For EBS and other wireless services where service can be discontinued without prior Commission approval, the Commission has tentatively concluded that permanent discontinuance of service should be defined as 180 consecutive days without operations.¹⁴

¹⁰ Notice at ¶¶ 37-39.

¹¹ For example, a renewal applicant for an EBS station operated by one campus of a multiple-campus university system licensed to operate numerous stations in multiple services (*e.g.*, EBS, campus radio stations, television stations, low power television stations, satellite earth stations, and other wireless service stations) would have to find and produce all relevant documentation from other campuses and stations.

¹² The Commission’s proposal also appears inconsistent with the Paperwork Reduction Act, which requires the Commission to minimize the burden of the collection of information on those who are to respond, to evaluate whether the proposed collection of information is necessary for the proper performance of the agency’s functions (including whether the information has “practical utility,” and to avoid collection of information that is unnecessarily duplicative of information otherwise reasonably accessible to the Agency). *See* 44 U.S.C. § 3506.

¹³ Notice at ¶¶ 53-55.

¹⁴ Notice at ¶ 56.

While CTN and NEBSA can appreciate the Commission's desire for uniformity in discontinuance rules, the unique nature of EBS licensees warrants a longer period than 180 days, and CTN and NEBSA believe that it would be more appropriate to define permanent discontinuance of service for EBS as 365 consecutive days without service. This is consistent with the prior rule applicable to EBS.¹⁵ It is also necessary to accommodate yearly EBS budget cycles and other limitations commonly applicable to educational institutions and other public agencies.

The discontinuance of service rule should also include a process, as proposed, by which a licensee can request an extension of the deadline in exigent circumstances where there is no intention to permanently discontinue operations, but for reasons beyond the licensee's reasonable control, the licensee has been unable to restore operations within the applicable deadline. For example, a state agency licensee operating on a biennial budget whose transmission facilities are destroyed in an earthquake or hurricane might find that it cannot budget funds for restoring service until the next budget can be adopted, which might be more than one year in the future.

The Commission has asked when it should apply a discontinuance of service rule to EBS.¹⁶ CTN and NEBSA recommend that the effective date be May 1, 2011, unless a particular EBS licensee has obtained an extension of the May 1, 2011 substantial service deadline, in which case the date should be extended for that licensee to the date that the licensee is required to resume service.

¹⁵ Former Section 74.932(d) of the FCC's rules provided that "a station which is not operated for a period of one year is considered to have permanently discontinued." In such cases, the licensee was required to forward the license to the Commission for cancellation. However, in many cases where licensees were able to demonstrate that their temporary non-operation of a station was not intended to be a permanent discontinuance, the Commission waived the forfeiture provisions of the rule.

¹⁶ Notice at ¶ 66.

V. Conclusion

EBS is the only spectrum licensed exclusively to educators for educational purposes. While many of the rules and polices that the Commission has proposed for wireless services generally can be applied to EBS, some exceptions are warranted due to the unique nature of EBS.

Respectfully submitted,

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