

**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 ) WT Docket No. 10-112  
Wireless Radio Services )  
)  
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 )

To: The Commission

**JOINT REPLY COMMENTS OF EBS LICENSEES**

Clarendon Foundation, Inc., The Source for Learning, Inc., Bridge The Divide Foundation, Inc., the Indiana Higher Education Telecommunication System (on behalf of its member institutions), the Tennessee Board of Regents (on behalf of its member institutions) Bellville Independent School District, Florida Atlantic University, the School Board of Broward County, Florida and National Conference on Citizenship (collectively, the “EBS Licensees”),<sup>1</sup> by counsel and pursuant to Section 1.415(c) of the Commission’s Rules, hereby submit Reply Comments in the above-captioned proceeding regarding the standards for renewal and cancellation of Educational Broadband Service (“EBS”) licenses.<sup>2</sup> The *NPRM* proposes to

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<sup>1</sup> Exhibit A to the EBS Licensees’ initial Comments in this proceeding contains a list of the EBS Licensees and their call signs. See Joint Comments of EBS Licensees, WT Docket No. 10-1123, filed Aug. 6, 2010 (“Joint Comments”).

<sup>2</sup> *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; 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*, WT Docket No. 10-112, rel. May

require EBS licensees to submit extensive documentation to meet a more stringent “renewal showing” standard, modeled on the rules for the commercial 700 MHz service. As discussed below, the EBS Licensees support the views expressed by other EBS and BRS licensees and their spectrum lessees, which unanimously agree that the Commission should reject its proposal.

The record reflects no support for the Commission’s proposal and overwhelming opposition to requiring EBS licensees to make a detailed “renewal showing.” Commenters observe that EBS licensees are in the process of meeting “substantial service” obligations by a May 1, 2011 deadline, under rules adopted in 2006. As one example, HITN, holder of multiple EBS licenses, “believes that the proposed detail intensive renewal requirements would be improper for EBS licensees . . . as EBS licensees have relied on the substantial service obligations,” and that changing the standard “would place an undue burden on these educational entities.”<sup>3</sup> ComSpec states that the Commission’s proposal “will pose unnecessary problems both for the individual licensees and the industry now beginning nationwide rollouts of mobile wireless services using 2.5 GHz spectrum” and that “new facilities are being designed with the intention to comply with the existing substantial service requirements.”<sup>4</sup>

Moreover, Commenters question the value of the “renewal showing” and the detailed information the Commission proposes to collect for EBS renewal applicants. CTN/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

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25, 2010 (“*NPRM*”). The *NPRM* was published in the Federal Register on July 7, 2010. See 75 Fed.Reg. 38959 (July 7, 2010).

<sup>3</sup> Comments of Hispanic Information and Telecommunications Network, Inc. in WT Docket No. 10-112 at 3 (“HITN Comments”) at 3. See also Joint Comments at 4-5, 6.

<sup>4</sup> Comments of ComSpec Corporation in WT Docket No. 10-112 at 3 (“ComSpec Comments”) at 1, 2

requirements for EBS stations found in the Commission’s rules.”<sup>5</sup> EBS lessee Clearwire concurs, citing its “doubts that the submission of copious amounts of data for its thousands of licensees covering a geographic radius of 35 miles or less will provide much useful information for the Commission staff, particularly when Clearwire will have already made a substantial service showing to meet its construction deadlines.”<sup>6</sup> ComSpec adds its “concern” with “the proposed ‘renewal showing’ being relevant, consistent and practical.”<sup>7</sup>

Commenters also correctly observe that the Commission’s proposal suffers from a lack of specificity, which presents grave consequences for EBS licensees if the proposal is adopted. As WCAI points out, the Commission’s proposal undermines expectations of licensees’ certainty in their license renewal, even if they demonstrate substantial service:

Nowhere does the *NPRM* define or even discuss what standard a “renewal showing” must satisfy to earn a renewal expectancy. Rather, the Commission merely lists factors that might be relevant to license renewal and requests comment on whether it should use those factors to determine “whether a licensee has demonstrated a level of service warranting renewal,” without indicating what that “level of service” might be.<sup>8</sup>

Similarly, ComSpec states that “[t]he proposed ‘renewal showing’ does not appear to have a consistent set of standards, rather the possibility of an ever-changing standard based on changing expectations.”<sup>9</sup> EBS licensees and their commercial partners simply would not have the requisite certainty to invest in building and operating advanced wireless networks where spectrum licenses are subject to an unknown, amorphous standard – as WCAI puts it, “no standard at all.”<sup>10</sup>

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<sup>5</sup>Comments of Catholic Television Network and National EBS Association in WT Docket No. 10-112 (“CTN/NEBSA Comments”) at 4.

<sup>6</sup> See Comments of Clearwire Corporation in WT Docket No. 10-112 at 5.

<sup>7</sup> ComSpec Comments at 2.

<sup>8</sup> Comments of the Wireless Communications Association International, Inc. in WT Docket No. 10-112 (“WCAI Comments”) at 5. See also Joint Comments at 7, n.13.

<sup>9</sup> ComSpec Comments at 2.

<sup>10</sup> WCAI Comments at 6.

The current “substantial service” standard with “safe harbors,” which defines a service level that is substantially above the level of service which would minimally warrant renewal, provides far better guidance to EBS licensees than would the amorphous standard the Commission proposes. In light of this fact and the significant administrative burdens that would result from imposing the undefined “renewal showing,”<sup>11</sup> the Commission instead should require EBS licensees to certify in renewal applications their ongoing compliance with the “substantial service” requirements of Section 27.14(o). WCAI likewise agrees that a certification requirement, not a “costly fishing expedition,” “will provide the Commission with the information it needs to confirm that the licensee has continued to perform at the level required to earn a renewal expectancy.”<sup>12</sup> In short, an EBS licensee adequately demonstrating substantial service at renewal should be presumptively entitled to a renewal expectancy if it certifies compliance with Commission rules and ongoing “substantial service.”<sup>13</sup>

The proposals to adopt a vague “renewal showing” and to require submission of voluminous and unnecessary data that will be burdensome to collect should be rejected. If, however, the Commission insists on pursuing the current “renewal showing” approach, Commenters unanimously agree with the EBS Licensees that any rules changing the current EBS license renewal framework should not apply to EBS licensees whose license term is scheduled to expire on or before the “substantial service” deadline.<sup>14</sup> Sprint Nextel also “strongly supports delaying the application of renewal showing requirements for licensees such as BRS and EBS

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<sup>11</sup> See Comments of Sprint Nextel Corporation in WT Docket No. 10-112 at 7 (stating that the Commission “does not articulate the standard it intends to use to evaluate the proposed substantial service renewal showing data,” which “will result in licensee uncertainty not to mention legal infirmity”).

<sup>12</sup> WCAI Comments at 7, 9.

<sup>13</sup> See CTN/NEBSA Comments at 6; HITN Comments at 4. The Commission can of course seek additional information from the renewal applicant if information in the renewal application is unclear or incomplete.

<sup>14</sup> See CTN/NEBSA Comments at 4; HITN Comments at 3.

licensees currently in the midst of the complex transition of the 2500-2690 MHz band.”<sup>15</sup> The EBS Licensees proposed that any additional renewal requirements should not apply until March 28, 2016, and while Commenters suggest a variety of start dates, they agree that any new renewal showing requirements should not apply to EBS licenses scheduled to expire on or before May 1, 2011.

The EBS Licensees agree with CTN/NEBSA and others<sup>16</sup> that the Commission also should make no determination that an EBS licensee has permanently discontinued service unless and until service is disrupted for at least 365 consecutive days. The Commission’s tentative conclusion – that such a discontinuance should be defined as 180 consecutive days without operations – does not adequately account for the unique nature of EBS and the “yearly EBS budget cycles and other limitations commonly applicable to educational institutions and other public agencies.”<sup>17</sup> In addition, the EBS Licensees support CTN/NEBSA’s proposal for implementation of a process that would permit an EBS licensee to request an extension of the service discontinuance deadline in exigent circumstances.<sup>18</sup>

In sum, the record reflects a total lack of support for the Commission’s renewal proposal, in light of the unique nature of EBS, the burdens that a detailed information collection would create, the lack of value that information would have in creating a renewal expectancy and vagueness of the Commission’s proposed renewal standards. Efforts to “harmonize” EBS with commercial wireless services must account for these important facets of EBS and must preserve the settled, reasonable expectations of EBS licensees that have constructed – and are constructing – post-transition networks in reliance on existing “substantial service” criteria.

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<sup>15</sup> See Sprint Nextel Comments at 10.

<sup>16</sup> CTN/NEBSA Comments at 7; HITN Comments at 4.

<sup>17</sup> CTN/NEBSA Comments at 7.

<sup>18</sup> *Id.*

## Conclusion

The EBS Licensees urge the Commission to reject its “renewal showing” proposal and to adopt the EBS Licensees’ alternative proposals described herein and in their Joint Comments.

Respectfully submitted,

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August 23, 2010

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