



February 22, 2011

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

Re: ***Comments in Support of Extension of “Substantial Service” Deadline  
WT Docket No. 11-22***

Dear Ms. Dortch:

The Educational Broadband Service (“EBS”) licensees listed below (the “Licensees”), by counsel and pursuant to the Commission’s *Public Notice* initiating this proceeding,<sup>1</sup> hereby write to support the request filed jointly by the National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”) (“NEBSA/CTN Request”) seeking additional time for EBS licensees to fulfill their “substantial service” obligations under Section 27.14(o) of the Commission’s Rules. For the reasons articulated in the NEBSA/CTN Request and below, the Licensees submit that grant of an extension of time until November 1, 2011 would be consistent with the public interest. The Commission should promptly grant the NEBSA/CTN Request.

Each of the Licensees has entered into excess capacity spectrum lease agreements with commercial operators. Each Licensee is working closely, diligently and earnestly with its commercial partner to meet the “substantial service” obligations. In some cases, full commercial deployment has commenced. In others, construction of facilities is underway and expected to be completed soon. Although the Licensees believe that the current May 1, 2011 deadline can be met, an additional six months would afford the Licensees some breathing room to ensure that the facilities are operating correctly and that the spectrum is being used to meet the educational use requirements of Section 27.14(o)(2).

In a number of situations, the facilities constructed by the commercial lessee do not cover the Licensees’ educational facilities, either because the licensee is non-local or because the commercial partner has chosen to construct in an area of the local school’s Geographic Service Area outside of the areas where the Licensee’s schools are located. The Licensee then must make arrangements with other, often unrelated schools – which

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<sup>1</sup> See *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Request to Extend the Substantial Service Deadline for Educational Broadband Service Licensees to November 1, 2011,” WT Docket No. 11-22, DA 11-81, rel. Feb. 11, 2011.

are not EBS licensees – to ensure that they satisfy the educational elements of “substantial service.” Until the commercial lessee completes construction of some or all of the facilities in the GSA, it cannot be determined with certainty where coverage will exist and what “substantial service” use can be implemented.<sup>2</sup> In cases where construction is being finalized, there may be insufficient time for the Licensee to identify the local school, explain the educational use requirements and ensure that the local school implements a compliant educational use program.

In addition, the Licensees appreciate that commercial lessees may experience unanticipated delays in provisioning service from third parties.<sup>3</sup> Given that the bases for these delays are gating issues that must be resolved before coverage can be ascertained – which sets in motion the decisions and arrangements discussed above – additional time may be required. Rather than address these on an independent case-by-case basis, adopting a blanket extension of time would be a more efficient way for the Commission to proceed.

As NEBSA and CTN note, the transition of the BRS and EBS services to the new 2.5 GHz band plan is nearly complete. In similar circumstances involving nationwide transitions to new spectrum plans, the Commission has granted extensions of construction deadlines. For example, prior to the completion of the DTV transition, the Commission granted individual DTV permittees six-month extensions of time to construct for circumstances that were unforeseeable or beyond the licensee’s control, such as delays in obtaining zoning or FAA approvals, or where the applicant suffered from severe financial hardship or was the subject of a bankruptcy or receivership proceeding.<sup>4</sup> In addition, the Commission implemented Congressional directives in the DTV Delay Act in extending the DTV transition deadline nationally from February 17, 2009 until June 12, 2009 to give consumers additional time to prepare for the transition.<sup>5</sup>

The Licensees also believe that six months is an appropriate extension period. The Licensees expect that this brief extension will be sufficient to accommodate most circumstances where integration of educational use and third-party delays warrant additional time.

Finally, the Licensees urge the Commission to act expeditiously on the NEBSA/CTN Request. Although the Licensees plan to continue their efforts to meet the “substantial service” test as quickly as possible, the Commission should not wait until the

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<sup>2</sup> For fixed use applications, an EBS licensee may, for example, meet the educational use requirements by allowing teachers and administrators living in the coverage footprint to create lesson plans, research projects or access online grading and reporting systems. Or, a licensee may make arrangements with another local school for distance learning. The choices faced by a licensee in a given case are necessarily dependent on where the commercial lessee constructs the “substantial service” facilities.

<sup>3</sup> See NEBSA/CTN Request at 4; Letter from Cathleen A. Massey, Clearwire Corporation, dated February 11, 2011 (citing “equipment deployment, backhaul connectivity, and permitting delays encountered in some markets”).

<sup>4</sup> See 47 C.F.R. §73.624(d)(3)(ii)(B).

<sup>5</sup> See *Implementation of the DTV Delay Act*, FCC 09-9 (rel. Feb. 13, 2009) at para. 1

eve of the May 1, 2011 deadline to act. If that were the case, EBS licensees may have no choice but to file individual requests for extension of time based on particular circumstances, leading to time-consuming and administratively inefficient case-by-case review by FCC staff. The public would be better served if the Commission approved the NEBSA/CTIN Request well in advance of the current deadline, and reset ULS to avoid the necessity for each EBS licensee to individually seek extension.

Respectfully submitted,

*/s/ Robert Rini*

*/s/ Stephen E. Coran*

Robert Rini

Stephen E. Coran

Counsel to:

Clarendon Foundation

The Source for Learning, Inc.

Tennessee Board of Regents on behalf of

Chattanooga State Community

College, East Tennessee State

University, Jackson State

Community College, Pellissippi

State Community College, and

Southwest Tennessee Community

College

Indiana Higher Education

Telecommunication System on

behalf of Ball State University,

Indiana University, Vincennes

University, Purdue University, and

the University of Southern Indiana

Morgan County (GA) School Board

Walker County (GA) School Board

cc (by email): Blaise Scinto  
John Schauble  
Nancy Zaczek