

June 6, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**RE: Ex Parte Communication**

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 Catholic Technology Network ("CTN"), the National EBS Association ("NEBSA"), the Wireless Communications Association International ("WCAI"), and the Hispanic Information and Telecommunications Network, Inc. ("HITN") hereby submit the attached proposal ("Consensus Proposal") to license all remaining unassigned Educational Broadband Service ("EBS") spectrum. We urge the Commission to issue a public notice seeking comment on the Consensus Proposal and then to act expeditiously to adopt final rules to license all remaining EBS spectrum. Proposed revisions to Parts 1 and 27 of the Commission's rules are included as Appendix A to the Consensus Proposal.

Expeditious action is requested because it has been nearly 20 years since eligible EBS entities have had the opportunity to apply for new EBS licenses.<sup>1</sup> In the meantime, both incumbent EBS licensees and potential new entrants have been precluded from using EBS spectrum in many areas of the country.

In 2008, the Commission initiated a comprehensive notice of proposed rulemaking to develop a record on a broad range of options to license EBS spectrum including "by competitive bidding among applicants, as well as through other means that would avoid mutual exclusivity among applications, obviating any need for competitive bidding."<sup>2</sup> The Commission asked for

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<sup>1</sup> In re Amendment of Part 74 of the Commission's Rules with Regard to the Instructional Television Fixed Service, *Report and Order*, 10 FCC Rcd 2907 (1995).

<sup>2</sup> 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*, WT Docket No. 03-66, 23 FCC Rcd 5992 at ¶ 187 (2008) ("Notice").

comment “on all available options for granting geographic area licenses without providing for mutually exclusive applications.”<sup>3</sup> And it made clear that the options presented in the Notice were “not meant to preclude commenters from offering other proposals or raising other questions relating to the assignment of new EBS licenses.” The Commission sought comment on all questions and issues relating to the assignment of new EBS licenses.<sup>4</sup>

Most parties that responded to the Notice were in agreement that competitive bidding is not well-suited for EBS licensing. However, there was significant disagreement among commenters – including among CTN, NEBSA, and HITN – as to how vacant EBS spectrum should be licensed. After many years of discussion and debate, and through the cooperative efforts of NEBSA, CTN, WCAI, HITN, and many of the country’s larger EBS license holders, we are pleased to submit the Consensus Proposal as a reasonable and practical means to break this deadlock and get on with the important task of licensing all remaining EBS spectrum.

We stand ready to assist the Commission in any way that is helpful to adopt final EBS licensing rules.

Respectfully submitted,

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<sup>3</sup> *Id.* at ¶ 196.

<sup>4</sup> *Id.* at ¶ 204.

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Attachments

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John Schauble  
Nancy Zaczek

**Consensus Proposal**  
**EBS Licensing – WT Docket No. 03-66**

**Initial Expansion to County Boundaries**

As a first step, on a channel-by-channel basis, existing Educational Broadband Service (“EBS”) geographic service areas (“GSAs”) that cover any portion of a county and are immediately adjacent to unlicensed areas in the county will expand to fill such adjacent unlicensed area up to the county boundary lines.<sup>1</sup> If two or more co-channel GSAs cover any portion of the same county and are adjacent to the same unlicensed area in the county, the area of expansion within such unlicensed area will be split among the incumbent GSAs.<sup>2</sup> County expansions will occur automatically by action of the FCC upon the effective date of the new rules (no applications or notices of participation will be required).<sup>3</sup>

**Announcement of Available EBS Spectrum**

After release of the Public Notice announcing initial county expansions, the FCC will release a second Public Notice which includes the attached spreadsheet, identifying on a channel-by-channel basis, the specific states and counties where EBS spectrum is available for application. The Public Notice will also announce the date no earlier than 30 days following the issuance of the Public Notice when Stage 1 applications may be filed.

**Stage 1 Applications**

Stage 1 applications will be filed during a one-day, first come, first served filing window that will be limited to applications by EBS eligible Native American Tribal Entities proposing GSAs that fall within the geographic boundaries of their Tribal Lands.<sup>4</sup> This Tribal priority will further

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<sup>1</sup> A “county” means a county-equivalent entity as defined in Federal Information Processing Standards Publication 6-4 (August 31, 1990), which is currently used by the FCC for spectrum licensing purposes.

<sup>2</sup> Splits will occur by drawing straight lines between the reference points of participating incumbent GSAs (without crossing any other incumbent GSAs) and then drawing perpendicular lines to those lines located half way between the reference points which run to county boundaries or to the intersection with other such perpendicular lines, whichever occurs first.

<sup>3</sup> Since the E or F group channels have been licensed for the Broadband Radio Service everywhere except where there are grandfathered EBS stations, there will be no expansion of these channels and they will continue to be governed by the provisions of Section 27.1216(a) of the Rules. MVPD opt-out stations will be permitted to participate in the expansions with the understanding that any operations in the expansion area will have to be consistent with the new EBS band plan and technical rules.

<sup>4</sup> Native American Tribal Entities” means entities that are listed on the U.S. Secretary of the Interior’s currently published list of Indian Tribes recognized to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians (*See The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act, Public Law 103-154, 108 Stat. 4791 (1994)) and that otherwise meet EBS eligibility requirements. “Tribal Lands” means any federally recognized Indian

the goal of encouraging further deployment and use of wireless spectrum on underserved Tribal lands.<sup>5</sup> The GSA of each proposed station (and thus, the geographic area of the Tribal Lands in question) must be at least 1924 square miles and not occupy areas covered by licensed GSAs on the channel group proposed. Tribal Land GSAs must be specified in accordance with ULS policies for specifying non-standard geographic areas.

The FCC will grant an EBS license for one channel group within each Tribal Land. Once an application that is acceptable for filing for any channel group is submitted for a given geographic area, subsequent applications for that Tribal Land will be cut-off and dismissed. The FCC will then release a Public Notice listing the Tribal Land EBS licenses granted and the date no earlier than 30 days following the issuance of the Public Notice when Stage 2 applications may be filed. Any EBS eligible Native American Tribal Entity that wants to file for additional EBS licenses may do so by filing Stage 2 or Stage 3 applications.

### **Stage 2 Applications**

Stage 2 applications will be filed during a one-day, first come, first served filing window during which any EBS eligible entity may apply for available EBS spectrum. If a one-day filing window is not technically feasible, the filing window will be broken down into batches by state or groups of states. Applications may be filed on a county-by-county and channel-group-by-channel-group basis (recognizing that some applications may be for fewer than all four channels of a group, due to prior licensing), including for EBS spectrum remaining in any county that is partially covered by a Tribal Land EBS license on an overlay basis, protecting the boundaries of the Tribal Land EBS license.

During this filing window, an applicant and any attributable party to such applicant will collectively be permitted to file up to seven applications.<sup>6</sup> While an applicant may increase its chances of obtaining a license in a particular county by filing separate applications for multiple available channel groups, an applicant can be awarded a license for only one channel group within any single county during Stage 2. Thus, if one of an applicant's applications for a county is granted, its remaining applications for that county will be dismissed.

### **Stage 3 Applications**

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tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian allotments.

<sup>5</sup> See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, FCC 11-29, at ¶¶ 3-4 & 35 (rel. Mar. 3, 2011). See also *Connecting America: The National Broadband Plan*, prepared by the staff of the Federal Communications Commission, March, 2010 at p.23.

<sup>6</sup> The following parties shall be attributable to the applicant: (a) its affiliates, (b) its controlling interests, and (c) the affiliates of its controlling interests, as these terms are defined in 47 C.F.R. Sections 1.2110(c)(2)(i), 1.2110(c)(2)(ii) and 1.2110(c)(5).

Following completion of the Stage 2 licensing process, the FCC will release a Public Notice listing the Stage 2 licenses granted and announcing the date no earlier than 30 days following the issuance of the Public Notice for commencement of a first come, first served rolling filing window during which applications may be filed for any remaining EBS spectrum by any EBS eligible entity. During the rolling filing window, there will be no limit on the number of applications a single entity may file. Applications will be filed county-by county and channel-group-by-channel-group (recognizing that some applications may be for fewer than all four channels of a group due to prior licensing).

In both Stage 2 and Stage 3, the first-filed application that is acceptable for filing for a particular channel group in a county will be granted. Subsequent applications will be cut-off and dismissed.

### **Rules**

Draft rules implement this consensus proposal are attached as Appendix A.

**APPENDIX A**

**PROPOSED RULE CHANGES**

1. Section 1.2102 is amended by replacing paragraph (c)(4) with the following:

(c) \* \* \*

(4) Educational Broadband Service (*see* 47 CFR part 27, subpart M).

\* \* \* \* \*

2. Section 27.4 is amended by adding the following definitions in appropriate alphabetical order:

\* \* \* \* \*

*County.* A county or a county-equivalent entity as defined in Federal Information Processing Standards Publication 6-4 (August 31, 1990).

\* \* \* \* \*

*Native American Tribal Entities.* Entities that are listed on the U.S. Secretary of the Interior’s currently published list of Indian Tribes recognized to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians (*See The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act, Public Law 103-154, 108 Stat. 4791 (1994)))

\* \* \* \* \*

*Tribal Lands.* Any federally recognized Native American Tribal Entity’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian allotments.

\* \* \* \* \*

3. Section 27.11 is amended by revising paragraph (a) to read as follows:

**§27.11 Initial authorization.**

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with §27.5. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§1.1301 through 1.1319 of this chapter or as required by §27.1207, §27.1209 or §27.1219 of this chapter. Applications for initial authorizations for Educational Broadband Service licenses are governed by §27.1219.

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4. Section 27.1206 is amended to read as follows:

## **§27.1206 Geographic Service Area.**

The Geographic Service Area (GSA) for a BRS or EBS channel is:

(a) For BRS:

(1) For BRS incumbent licenses granted prior to September 15, 1995, the GSA for a channel is the area that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licenses prior to January 10, 2005, subject to being bounded by the chord(s) drawn between any intersection points of the licensee's previous 35 mile PSA and those of overlapping adjacent market, co-channel PSAs.

(2) For BRS BTA authorization holders, the GSA for a channel is the BTA, subject to the exclusion of overlapping, co-channel incumbent GSAs as described in paragraph (a)(1)(i) of this section.

(3) If the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.

(b) For EBS:

(1) For incumbent EBS licenses in effect as of [INSERT EFFECTIVE DATE OF NEW RULES], the GSA for a channel shall be determined by first taking the GSA in effect immediately prior to such date as created by the Report and Order and Further Notice of Proposed Rulemaking in WT Docket 03-66, 19 FCC Rcd 14165 (2004), or the GSA otherwise subsequently determined by the Commission; and then, if that GSA covers any portion of a county and is immediately adjacent to unlicensed areas in the county, expanding the GSA to fill such adjacent unlicensed area up to the county boundary lines, provided however that if on [INSERT EFFECTIVE DATE OF NEW RULES] two or more co-channel GSAs cover any portion of the same county and are adjacent to the same unlicensed area in the county, the area of expansion within such unlicensed area will be split among the incumbent GSAs. Such splits will occur by drawing straight lines between the reference points of participating incumbent GSAs (without crossing any other incumbent GSAs) and then drawing perpendicular lines to those lines located half way between the reference points which run to county boundaries or to the intersection with other such perpendicular lines, whichever occurs first. Notwithstanding the foregoing, GSAs for channels in the E and F Groups shall not expand as of [INSERT EFFECTIVE DATE OF NEW RULES] and shall continue to be established by §27.1216(a) of this chapter.

(2) For new EBS licenses issued to Native American Tribal Entities pursuant to §27.1219 of this chapter, the GSA for a channel shall be that portion of the licensee's Tribal Lands specified in the application for such license.

(3) For other new EBS licenses issued after [INSERT EFFECTIVE DATE OF NEW RULES], the GSA for a channel shall be the county for which license is issued,

subject to the exclusion of overlapping, co-channel incumbent GSAs as described in paragraph (a)(2)(ii) of this section.

5. Section 27.1209 is amended by revising paragraph (a) as follows and eliminating paragraph (c):

**§27.1209 Conversion of incumbent EBS and BRS stations to geographic area licensing.**

(a) Any EBS or BRS station licensed by the Commission, other than BTA authorizations, facilities authorized pursuant to BTA authorizations, initial EBS licenses issued after [INSERT EFFECTIVE DATE OF NEW RULES] or facilities authorized pursuant to initial EBS licenses issued after [INSERT EFFECTIVE DATE OF NEW RULES], shall be considered an incumbent station.

\* \* \* \* \*

6. A new Section 27.1219 is added to read as follows:

**§ 27.1219 Applications for new Educational Broadband Service licenses.**

(a) *Stage 1 (Native American Tribal) Window.*

(1) On such date within one year of [INSERT EFFECTIVE DATE OF NEW RULES] as shall be established by public notice, a one-day first come, first served filing window will open during which Native American Tribal Entities that otherwise meet EBS eligibility requirements may apply for new EBS licenses. Each such application shall be limited to no more than the four channels within a single EBS channel group and may only propose GSAs that fall within the geographic boundaries of their Tribal Lands, that are at least 1924 contiguous square miles and that do not occupy areas covered by licensed GSAs of incumbent stations on the channel group proposed. Only one Stage 1 EBS license shall be issued for any geographic area and the first application for a given geographic area which is acceptable for filing shall be cut-off from any subsequent Stage 1 applications for all or part of the same geographic area. Such subsequent applications will not be accepted and shall be dismissed.

(2) In the event any Stage 1 application is pending at the time of a Stage 2 or Stage 3 Window in which the Commission offers a co-channel Stage 2 or Stage 3 EBS License that overlaps the Tribal Land proposed to be served by the Stage 1 application, any Stage 2 or Stage 3 EBS license issued by the Commission shall be subject to the final disposition of the Stage 1 application. In the event any license issued pursuant to the Stage 1 Window is forfeited or cancelled, the GSA of that license shall dissolve and the right to operate in that area automatically reverts to any licensee(s) for the corresponding co-channel county license(s) issued pursuant to Stage 2 or Stage 3.

(b) *Stage 2 Windows.*

(1) On such date or dates following the Stage 1 Window as shall be established by public notice, one or more first come, first served filing windows will open during which

any EBS eligible entity may apply for such available new EBS licenses as shall be specified in the public notice. New Stage 2 EBS licenses shall be made available on a county-by-county and channel-group-by-channel-group basis (although fewer than all four channels of an EBS channel group may be available in any given county due to prior licensing). The public notice preceding each Stage 2 window shall identify the counties that will be the subject of the window and the channel groups within each county that will be made available during that window. Each available EBS license shall be made available once, but only once, during the Stage 2 Window process. Any license for a county that is partially covered by a Stage 1 EBS license shall only cover those portions of the county not covered by the Stage 1 EBS license. Applications for an available Stage 2 EBS license shall be cut-off upon the filing of the first application for that license which is acceptable for filing. Subsequent applications will not be accepted and shall be dismissed.

(2) An applicant and any “attributable” party with respect to such applicant may collectively cumulatively file across all Stage 2 Windows no more than seven applications. For purposes of this restriction, the following parties shall be attributable to the applicant: (a) its affiliates, (b) its controlling interests, and (c) the affiliates of its controlling interests, as these terms are defined in Sections 1.2110(c)(2)(i)-(c)(2)(ii) and 1.2110(c)(5) of this chapter. While an applicant may increase its chances of obtaining a license in a particular county by filing separate applications for multiple available channel groups, an applicant can be awarded a license for only one channel group within any single county during the Stage 2 Windows.

(c) *Stage 3 Licensing.* On such date as shall be established by public notice after all EBS licenses available as of [INSERT EFFECTIVE DATE OF NEW RULES] shall have been made available pursuant to Stage 1 and Stage 2 Windows, all remaining EBS spectrum shall be made available on a county-by-county and channel-group-by-channel-group basis (although fewer than all four channels of an EBS group may be available due to prior licensing). Applications for an available Stage 3 EBS license shall be cut-off upon the filing of the first application for that license which is acceptable for filing. Subsequent mutually-exclusive applications will not be accepted and shall be dismissed. There shall be no limit on the number of Stage 3 applications an entity may submit and no limit on the number of licenses that an applicant can be awarded for any county or counties.

(d) Except as otherwise set forth in in this §27.1219, applications for new EBS station licenses shall be subject to the provisions of part 1, subpart F of this chapter, including provisions relating to the electronic filing of applications (§1.913), ownership information (§1.919), public notices (§1.933), petitions to deny (§1.939) and license grants (§1.945).

(e) EBS Stage 1, Stage 2 and Stage 3 licenses shall be blanket licenses permitting construction and operation of fixed or mobile stations on all licensed frequencies within the specified service area.

(1) Notwithstanding such blanket license, a station is required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under §1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under §1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under §17.4 of this chapter.