

National EBS Association

Annual Meeting

Henderson, NV

Regulatory Update

Edwin N. Lavergne

Fish and Richardson P.C.

Washington, D.C.

February 23, 2010

lavergne@fr.com

Substantial Service

Substantial Service

- **The Rule:** By May 1, 2011, all EBS licensees must be prepared to demonstrate that they satisfy the FCC's substantial service requirements (sooner if there is commercial use)
- **What is Substantial Service?** Service that is “sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal”
- **What's that mean?** Not clear. But, there is a simple three prong “safe harbor” available to EBS licensees

Safe Harbor: Prong 1

Educational Use

Within GSA

20 Hrs Per CH Per WK

- Serve the educational mission of at least one accredited institution providing formal education to enrolled students
 - Actual service required
 - No color bars
 - No test patterns
 - No TV programming without viewers
 - No computers without users

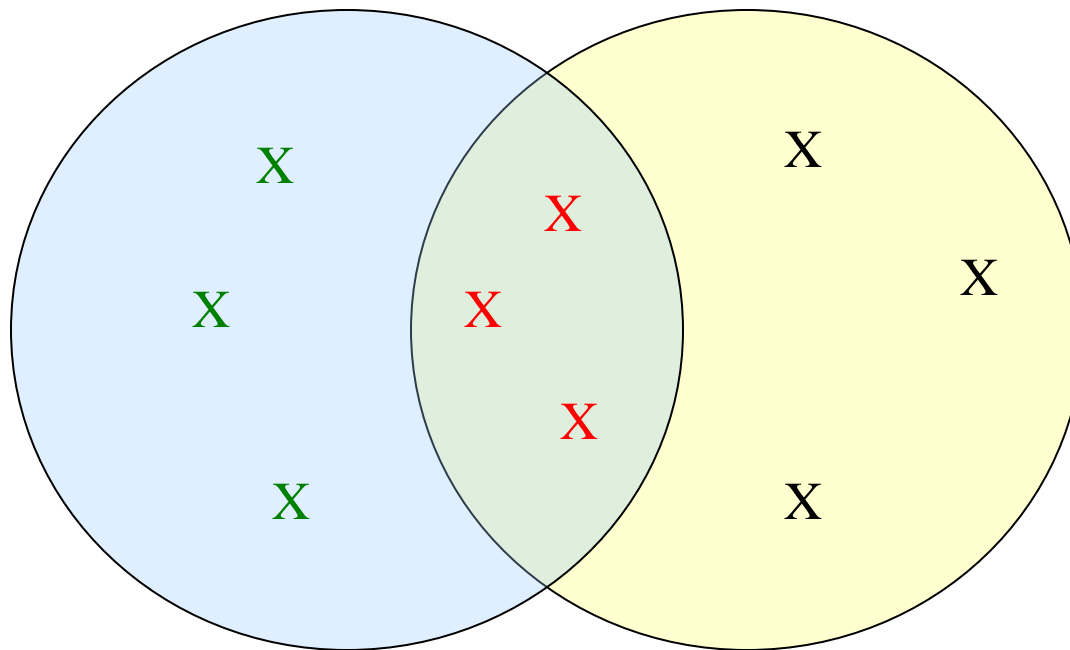
Safe Harbor: Prong 2

Educational Use

Within GSA

20 Hrs Per CH Per WK

- Provide service within the GSA of your license



Safe Harbor: Prong 3

Educational Use

Within GSA

20 Hrs Per CH Per WK

- Provide at least 20 hours per channel per week of service on the spectrum
 - Shifting to other BRS or EBS Channels permitted

You have Lots of Flexibility

- Video, voice, and data uses are permissible
- In classroom instruction *not* required
- Services must be in furtherance of your educational mission
 - Professional and technical training
 - Personnel conferences
 - Distribution of reports, assignments and other data
 - Administrative support
 - Transportation
 - Public safety

But Remember...

These are the minimums

- Rules could change
- Interpretations could differ
- Goal should be to *maximize* use
 - At the end of the day, if asked for details about spectrum use, you should be *proud* of your response to the FCC
- The FCC expects something “substantially above a level of mediocre service”

Don't be satisfied with minimums

- “Efficient use of spectrum is of paramount importance. We will closely monitor deployment to determine whether changes are necessary down the road and whether the rules and policies we have adopted continue to have a nexus to our laudable goals.”
 - R&O and FNPRM, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) at ¶ 372.

EBS White Space

Why is this so Difficult?



- **Legal Issues:** Is it legally permissible to expand GSAs?
- **Policy Issues:** How many applications can a single entity file?
- **Technical Issues:** Are some white spaces too small for licensing?
- **Fairness Issues:** To what extent should new entrants be given an opportunity to participate?

CTN's Goals

- The white space licensing process should:
 - Avoid the need for auctions
 - Be all inclusive – allowing any eligible educator to apply
 - Be relatively easy to administer
 - Prevent multiple applications from a single party or group of parties
 - Provide incentives for settlement



June 1, 2009 Settlement Proposal

FISH & RICHARDSON P.C.

Frederick P. Fish
1815-1930

W.K. Richardson
1815-1931

June 1, 2009

VIA ELECTRONIC FILING

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

1425 K STREET, N.W.
11TH FLOOR
WASHINGTON, DC 20005

Telephone
202 783-9070

Facsimile
202 783-2331

Web Site
www.frl.com

Edwin N. Lavergne
202 626-6359

Email
lavergne@fr.com



ATLANTA
AUSTIN
BOSTON
DALLAS
DELAWARE
HOUSTON
MUNICH
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

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:

In the above-referenced proceeding, the Commission is faced with the difficult task of deciding how to fairly license unassigned Educational Broadband Service ("EBS") spectrum within the confines of a commercial auction law that mandates auctions for mutually exclusive EBS applications.¹ In this letter, the Catholic Television Network ("CTN") puts forth a new proposal to license EBS white space based on CTN's analysis of the comments and reply comments filed in this proceeding and discussions with several major stakeholders.

The proposal, which is endorsed by the United States Conference of Catholic Bishops and the National Catholic Educational Association, is intended as a compromise to reconcile fundamental differences among participants in this proceeding so as to allow the Commission to finally resolve this issue and license EBS throughout the nation. If adopted, the proposal would (1) avoid completely the need for auctions, (2) provide white space licensing opportunities for both new entrants and incumbents, and (3) be relatively easy to administer.

¹ See 47 U.S.C. § 309(j)(1) ("If ... mutually exclusive applications are accepted for any initial license ..., then, except [for exempted services, which do not include EBS], the Commission shall grant the license ... to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection."). In the *Second Further Notice of Proposed Rulemaking* in the above-referenced proceeding, the Commission asked for comment on how to license unassigned EBS spectrum through competitive bidding or through other means that would avoid the need for competitive bidding. 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*, 23 FCC Rcd 5992, 6062-63 ¶¶ 186-87 (2008).

CTN June 1, 2009 Proposal

- Filing window for any eligible entity with physical presence in BTA
 - 1 application
 - 1 channel group
 - 1 BTA
- Non-conflicting applications would be accepted for filing and granted; conflicting applicants would have 90 days to settle; if no settlement, applications would be dismissed
- Second filing window (identical except no physical presence requirement)
- GSA expansions would fill any remaining white space

Spectrum Inventory Legislation

Spectrum Inventory Bills

- “Regardless of what the National Broadband Plan says about spectrum policy going forward, whatever policy decisions are made need to start by taking account of existing spectrum uses and allocations.”
 - Rep. Henry Waxman (D-CA) Chairman of House Energy & Commerce Committee
- H.R. 3019 and 3125
- S. 649

Spectrum Inventory Requirements

- FCC/NTIA to take inventory of wireless spectrum (including BRS and EBS) including identification of:
 - Authorized services and licensees
 - Amount of spectrum assigned to each licensee
 - How spectrum is used and percentage of time in use
 - Number of transmitters and end users
 - Coverage maps
- Centralized portal for public access to results
- Reports to Congress with recommendations for spectrum to be reallocated

