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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Notice - Amendments 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, RM-10586, WT Docket No. 03-67, MM Docket No. 97-217, WT Docket No. 62-68. RM-9718

Dear Ms. Dortch:

AASA, The School Superintendents Association by counsel submits the attached paper, Proposal for a New Licensing Paradigm for the Educational Broadband Service (EBS), for consideration in this docket.

Respectfully submitted,



James H. Johnston

Proposal for a New Licensing Paradigm for the Educational Broadband Service (EBS)

**From AASA, The School Superintendents Association
June 8, 2015**

Background

In 1963, the FCC created the Instructional Televised Fixed Service (ITFS) to support education by bringing instructional programming to classrooms around the country. Originally composed of microwave frequencies delivered by transmitters to schools that wanted a license, the program has adapted with modern technology to become the current Educational Broadband Service (EBS), which delivers broadband frequencies to schools with EBS leases, who may use the connection or rent it to a third party to provide connection to the surrounding community.

General Principles

AASA believes these should be the general guiding principles for the new rules and procedures.

1. The widest possible deployment of broadband is in the national interest. EBS has a role in this because it can provide wireless broadband to many underserved communities as well as financial benefits to schools.
2. Future EBS licenses should be issued for the purpose of benefiting education generally rather than select institutions.
3. The financial benefits from EBS should be distributed fairly to any and all educational institutions that want to participate and distributed to such institutions on a per student basis.
4. The procedures should be transparent, simple, and easy for all institutions involved.
5. The procedures should avoid making educators compete with each other and should reduce opportunities for gamesmanship.
6. EBS should be viewed as a complement to the E-Rate program and, where applicable, policies developed in E-Rate should be adapted and applied to EBS.

Application and License Granting Process

Under AASA's proposed new licensing paradigm, the application would be a two-step process. The first step would be for the FCC to accept indications of interest from any accredited educational institution as defined later with enrolled students in a BTA. These "registrations" would not be applications for the license but rather an expression of interest by the educational institution that it wanted to participate in the communal EBS license. In order to be sure that educational institutions in the BTA were aware of this right, either the Commission or prospective applicants would send notices to all institutions within the BTA using a service that offers marketing services targeted at public and private schools a service, such as MDR.

There will be a multiplicity of schools with enrolled students in each BTA, including public schools, parochial schools, private schools, colleges, universities, and community colleges. Therefore, developing an electronic process whereby educational institutions register their interest on a short simple form that would require name, location, contact information, and number of enrolled students would be the first step. There is no reason to impose an arbitrary cutoff date for registration. In some areas of the country, it may be years before anyone is interested in the license. However, registration for a BTA will close once an application is filed. This will allow applicants and the Commission to know which institutions must be included in the sharing agreements.

Second, after the first phase is open for a certain amount of time (AASA recommends 90 or 120 days), the Commission would begin accepting applications for a license for an entire BTA. The applicants would know from Commission records all the educational institutions that had submitted expressions of interest.

Prospective applicants would have to monitor the registrations, contact registrants, and offer to sign them onto a sharing contact. There might be competition among prospective applicants. Presumably, registrants will sign on with the one offering the best terms. The result will be that the local educational community is in effect be "voting" on who should be the licensee. In any event, once an applicant has signed up a bare majority of registrants, then it has met the threshold qualification test and should be awarded the license.

A threshold qualification for an EBS license would be that the applicant had entered into sharing agreements with a majority of the interested institutions, i.e. more than 50 percent, for the BTA. These sharing agreements would provide that the licensee would make its best efforts to use the license to deliver wireless broadband to the institutions' communities and would share any lease revenues with the registrants on a per student basis.

The FCC would award the EBS license for the BTA to any qualified applicant on the further condition that it include in its sharing agreement any and all other registrations in

the BTA, including those not previously included. Such sharing agreements might also allow, but would not be required to, schools that did not register to join at a later point.

This does not end the process though. A period of time should be allowed during which the registrants who signed on with the losing applicant can, in effect, “jump ship” and join the winner if they so choose. This procedure helps deter gamesmanship. Moreover, there is no reason to deny the benefits of the license to an educational institution merely because it backed the wrong horse. Indeed, a licensee may, if it so chooses, have an open-ended sharing agreement that allows additional schools to join later. This reinforces the principle that the purpose of EBS is to benefit education generally and not specific educators.

Details of the Proposed Paradigm

1. New EBS licenses should be issued for Basic Trading Areas (BTAs). BTAs were chosen as the geographic service area of future licenses for two reasons. First, there are only 487 BTAs. This should be a manageable number from the FCC’s perspective. Indeed, this may be compared with the old system of defining service areas as within a 35-mile radius that has resulted in several thousand existing EBS licenses. Moreover, it may give licensees and educational institutions economies of scale when compared with the alternatives.

Public schools (K-12) operate within school districts, which geographically cover a county or smaller area. A majority of states organize school districts into areas smaller than counties while some states organize by county. But since there are tens of thousands of counties in the United States, managing a licensing program by county for something like wireless broadband on a national level appears daunting.

BTAs are defined by county, however, so educational institutions should be able to translate BTA boundaries to county boundaries and thus readily determine which BTA they are in.

2. Instead of continuing to issue licenses for five, twenty-four Megahertz blocks, there should be one license per BTA for the entire 120 Megahertz of spectrum or whatever smaller amount is available. At the present time, EBS has 120 Megahertz of spectrum. Originally, it was more, but when the Commission decided the spectrum was underutilized, it took some away. The spectrum has been subdivided into five blocks with each block consisting of four channels and each channel being six Megahertz wide. The reason for this is historical. An analog television channels required six Megahertz of spectrum; hence, six Megahertz has been the building block.

However, since this spectrum is now used for wireless broadband rather than television, there is no reason for continuing the old channel and block divisions in

licensing. Granted, the old system allowed the Commission to issue a license to more than one educator in a service area. But the practice varied over time. More importantly, under the procedure AASA advocates, there should be no difference in the distribution of benefits whether one license is issued for the entire 120 Megahertz or five licenses are issued for 24 Megahertz each. If there is more than one licensee per BTA, each will have to distribute the benefits to all registrants in the BTA on a per student basis. Thus, if there are lease revenues, an individual registrant should get roughly the same amount of money regardless of the number of licenses issued.

3. AASA proposes no change in the rules for eligibility a license. (It does of course add the threshold qualification about a successful applicant sharing the license with a majority of registrants). The reason for not changing the eligibility rule is that AASA does not feel the Commission needs to require any specific form of organization for the licensee. The focus should be on who gets the benefits and not upon the legal form of the applicant. For example, if existing licensees wish to expand their service areas, this proposal allows them to do that, provided they can qualify by offering to share the benefits derived from the expansion.

More importantly, retaining the present eligibility standard would permit educational institutions to form consortia to hold the license. Public schools commonly employ consortia to obtain, for example, economies of scale for programs that serve more than one school district. Special education is but one example. Public schools also may use consortia in filing E-Rate applications. AASA's proposal focuses on how benefits are distributed not on how the applicant is organized.

To be considered eligible for sharing and for the purpose of determining the number of enrolled students, a "registrant" would be defined similar to the way eligibility is established for the E-Rate program as an institution providing formal K-12 education at a day or boarding school and 2-year and 4-year colleges and universities and graduate schools that are day or boarding schools. Although this proposal does not change the eligibility for an EBS license, it patterns the eligibility for financial benefits after those used in the E-Rate program. Thus, only traditional educational institutions would be eligible to register and share in the financial benefits of EBS.

Applicants who on their own or through affiliated entities held five or more EBS licenses would be ineligible to acquire any more unless their sharing agreements passed through 100% of lease revenues to registered educational institutions. AASA's proposal does not fix the terms of the sharing agreement. This should be left up to negotiation and to state law. The FCC's requirements are only that the sharing agreements must include a majority of registrants in order to be qualified and that they must allow additional registrants to join after the applicant is deemed qualified. This leaves open the possibility that such sharing agreements

will not pass through 100% of the revenues the licensee receives from leases. For the most part, the Commission should let the registrants decide whether this is fair and reasonable. However, to deter those who would seek EBS licenses as a money-making business, the Commission should limit the number of licenses such a person could hold to five. There would be no limit on the number of EBS licenses that an entity passing through 100% of revenues could hold. Thus, for example, an agency of a state government would be allowed to acquire all the EBS licenses for that state if it passed through 100% of revenues to the registrants.

4. Current EBS rules should be clarified to recognize that the 5% of spectrum reserved for a licensee's use may include uses that benefit the licensee's community. The Commission should encourage EBS licensees to innovate in how to use their license to benefit education. Thus, any special program with an educational aim that aids the licensee's community should be considered an educational use.