

July 3, 2019

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

Re: *Transforming the 2.5 GHz Band*, WT Docket No. 18-120

Dear Ms. Dortch:

While we appreciate the Commission’s decision to move forward on licensing the long-unassigned Educational Broadband Service (“EBS”) spectrum, the recently released Draft Report and Order represents a missed opportunity to make meaningful progress in closing the digital learning divide. The Commission could have set itself on a path toward enhancing the EBS rules to promote greater rural deployment by—for the first time in more than 20 years—accepting applications from educators to license this spectrum. Instead, the Commission appears poised to conduct an auction of “overlay” spectrum, despite the numerous unaddressed issues that will drastically limit auction participation and fatally undermine the auction mechanism’s ability to assign spectrum efficiently.¹

The biggest flaw of all, however, is one that numerous commenters have identified from the beginning. Although the draft order repeatedly emphasizes the supposed benefits of such an auction for rural Americans,² it does nothing to address the fundamental challenge that has given rise to the rural digital divide in the first place: Commercial carriers do not have sufficient incentive to deploy spectrum that they acquire at auction in the most rural parts of the United States. These operators already have more than 600 megahertz of licensed spectrum available to them, some of which exhibits rural propagation characteristics that are even better than in the 2.5 GHz band. Yet rural areas remain unserved throughout the United States, which means that rural students face a troubling and persistent digital equity gap. Despite its interest in promoting rural connectivity, the Commission provides no reason to expect a different outcome from a 2.5 GHz overlay auction—especially after having eliminated, rather than strengthened, educational

¹ See, e.g., Reply Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 37-39, WT Docket No. 18-120 (filed Sept 7, 2018); Raul Katz & Fernando Callorda, Schools, Health & Libraries Broadband Coalition, *The Economic Benefit of Keeping the “E” in EBS: A Comparison of Licensing Unassigned EBS to Educators and Nonprofits vs. Commercial Auctions* 51-52 (2019), <http://www.shlb.org/uploads/Policy/Policy%20Research/SHLB%20Research/SHLB%20EBS%20Economic%20Study.pdf>.

² See, e.g., *Transforming the 2.5 GHz Band*, Draft Report and Order, WT Docket No. 18-120 ¶¶ 3, 13 (rel. June 19, 2019) (“Draft Order”).

eligibility and use rules that could have encouraged rural deployment along with long-term, education-led programs that have proven effective at closing the digital divide and homework gap.

One bright spot, however, is the Commission’s planned implementation of a tribal priority window for rural areas. The draft order is right to observe that rural tribal lands suffer from especially low broadband penetration. Therefore, it is logical to allow tribal entities priority access to spectrum “to promote service to areas that are currently unserved or underserved.”³ According to the Commission’s 2019 Broadband Deployment Report, only 67.9% of people living on tribal lands have access to fixed terrestrial connectivity at broadband speeds.⁴ We agree that this dire situation presents a compelling case for Commission action in the form of a tribal priority window.

Yet the Draft Order fails to acknowledge that these deserving tribal areas represent only a fraction of the areas on the wrong side of the digital divide. The Commission’s most recent Broadband Deployment Report *also* reveals that 417 counties across America are similarly situated to those tribal areas—with fixed broadband available to at most 67.9% residents and with available EBS spectrum that could promptly be used to help close the digital divide. These counties face a connectivity crisis that is no less severe than in tribal areas.

The Commission’s draft order not only rejects the idea of a priority filing window for educators, which is needed by communities across the country, but also fails to consider even the narrow possibility of an educational priority window targeted to these rural areas where the need is greatest. The reasons in the draft order for adopting the tribal priority window to close the digital divide apply equally to these similarly situated rural communities.

If the Commission is unwilling to provide a broad new educational priority filing window for all unlicensed spectrum in this band, we propose that the agency at least adopt a targeted rural educational priority window, modeled on the tribal priority window, for those counties where broadband connectivity is available to 67.9% or fewer residents. As with the tribal priority window, the Commission could exclude any urbanized areas identified by the Census Bureau with populations of 50,000 people or more from licenses issued through the window.⁵ This restriction to only the most rural areas in the United States both focuses the window on rural communities with the greatest need and minimizes the chances that spectrum licensed through a priority window would have been of interest to commercial operators in an overlay auction.

We propose that eligibility to participate in a rural educators’ window should only include accredited educational institutions, state and local government educational organizations (including libraries and library agencies), and nonprofit community anchor organizations

³ *Id.* ¶ 56.

⁴ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, GN Docket No. 18-238, Fig. 1 (rel. May 29, 2019).

⁵ Draft Order ¶ 58.

meeting community educational needs. Just as new tribal license areas would be restricted to local applicants for rural tribal lands, licenses issued through a rural educators' window would cover only the rural area⁶ of the school district in which the applicant has a local presence. Local presence could be established using a number of factors that demonstrate local knowledge of a community, including the provision of service to the local area. State departments of education, for example, by the nature of their authority and work have a local presence in all school districts in their respective states. While this may be an imperfect license area for some applicants, issuing school-district-based licenses to state education agencies or other state agencies could help to address rare instances where a rural community might have mutually exclusive applications.⁷

The Commission's planned build-out schedule for licenses issued during the tribal priority window—an interim milestone after two years and a final build-out deadline after five years⁸—would also be appropriate for licenses issued through a rural educators' window. Although this build-out schedule is quicker than the Commission is contemplating for commercial providers that acquire the spectrum at auction, a faster timeline is appropriate given the window's fundamental objective of accelerating deployment to meet the urgent needs of these unserved areas.

Finally, we propose that licenses issued through a rural educators' window be restricted in the same limited ways as tribal priority window licenses. Licensees should be free to either self-deploy or lease their licenses, as the licensee deems most appropriate to offer service to as many people as possible, as quickly as possible, within its license area. However, like tribal licensees, educators have “an urgent need for the spectrum to provide service to underserved ... communities.”⁹ Thus, like the new tribal licensees, rural educator licensees would be restricted from assigning or transferring their licenses until after they have met the applicable build-out requirements.

As the Commission has observed, “bringing broadband access to rural Americans is critical to providing them with the same economic, employment, education and civic opportunities that people in urban areas enjoy.”¹⁰ But the truth of this insight is not limited to tribal areas. As the Commission knows, rural areas throughout the country, both on and off of

⁶ Draft Order ¶ 56.

⁷ Local public schools, local school districts, and state departments of education, for example, all operate as part of the same state school system and therefore can be expected to coordinate among themselves to avoid filing mutually exclusive applications. This, too, tracks the Commission's decision to limit tribal priority window eligibility to federally recognized native tribes, communications providers controlled by tribes, and communications providers controlled by consortia of tribal entities. *Id.* ¶ 49-50. Although these eligibility rules create the possibility of mutual exclusivity between applicants in the tribal priority window, the commonalities of control and interests mitigate that possibility.

⁸ Draft Order ¶ 106.

⁹ *Id.* ¶ 64.

¹⁰ *Id.* ¶ 56.

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tribal lands, suffer from a critical lack of broadband connectivity. A consistent application of the Commission's reasons for the tribal priority window—which we agree are compelling—support a similarly targeted priority window for educators in rural areas. At a time when broadband connectivity is more important than ever to ensure equitable access to digital learning, no rural community should be deprived of this invaluable educational tool.

Sincerely,

/s/ Keith Krueger

Chief Executive Officer
CoSN
1325 G St.
Washington, D.C. 20005

/s/ Larra Clark

Deputy Director
American Library Association Public Policy &
Advocacy Office
1615 New Hampshire Ave. NW
Washington, D.C. 20009

/s/ Candice Dodson

SETDA
P.O. Box 10
Glen Burnie, MD 21060

/s/ Angela Siefer

Executive Director
National Digital Inclusion Alliance (NDIA)
3000 E Main St. #50
Columbus, OH 43209

/s/ John Windhausen, Jr.

Executive Director
Schools, Health & Libraries Broadband
(SHLB) Coalition
1250 Connecticut Ave. NW, Suite 700
Washington, D.C. 20036

/s/ Andreas Bitzarakis

Director of Broadband
Educators and Broadband Providers for American
Rural Communities (EBPARC)
8020 Great Cumberland Rd.
McLean, VA 22102