

May 13, 2019

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Ms. Dortch:

The Schools, Health & Libraries Broadband Coalition (“SHLB”), the North American Catholic Educational Programming Foundation, Inc. (“NACEPF”), Mobile Beacon, Voqal, the National Digital Inclusion Alliance (“NDIA”) and Public Knowledge respectfully request that the Federal Communications Commission (“FCC” or “Commission”) issue a public notice requesting additional comment in the proceeding to transform the Educational Broadband Service (“EBS”) and delay a decision in this proceeding until the Commission has an adequate record on which to base its decision.¹

We welcomed the FCC’s decision to undertake this proceeding, which has the potential to increase access to mid-band spectrum, accelerate broadband deployment—particularly in rural areas—and expand educational broadband benefits to more students, schools, anchor institutions, and communities. However, we are gravely concerned that the Commission may be moving forward with a decision when the record remains incomplete and the resolution of an integrally related proceeding remains uncertain.

We have heard that the FCC may schedule a vote on this proceeding in early June that would radically change the direction proposed in the NPRM, eliminate the educational nature of this band, foreclose opportunities for new educational entities to finally get access to spectrum for which they have been waiting over two decades, and summarily overturn the long-standing educational mission and public interest benefits for this spectrum that was established over 50 years ago. A drastic change that eliminates education from EBS threatens to widen the homework gap, impair rural broadband deployment, and put existing levels of service at risk by eliminating any requirement for commercial operators to provide ongoing educational benefits through public-private partnerships with EBS licensees or otherwise.

Although the docket has been open for one year, there are many central issues where there is currently an inadequate record. The Commission cannot reasonably move forward without seeking additional comment to ensure an adequate record on several key topics.

¹ See generally *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd. 4687 (2018) (“NPRM”).

To begin with, the Commission should not act until it has the benefit of rigorous economic analysis on the impact of the alternatives proposed in the NPRM.² In partnership with SHLB, Dr. Raul Katz has undertaken an economic study (the results of which will be public in a matter of days³) specifically to analyze the economic impact and social benefits of making EBS spectrum available to educational entities through a priority window versus moving immediately to an auction. This report will be the only authentic economic analysis offered in the docket and will provide the Commission with key evidence comparing the costs and benefits of the two approaches for licensing unassigned EBS spectrum. Given that this is *the* central issue of how to move forward with the EBS spectrum that has remained unassigned for more than two decades—primarily in rural and underserved parts of the United States—the Commission must consider this analysis and seek comment on it before moving forward with its decision.

In addition, the Commission has not made available to the public needed information about the current contours of existing EBS spectrum licenses and there is no reasonable way for the public to determine where EBS white space exists. The Commission’s own Universal Licensing System still does not properly reflect the license areas in accordance with the approach the Commission adopted fifteen years ago.⁴ As the AASA pointed out, this lack of readily-available public information significantly hinders public comment and undermines this proceeding, leaving many with no reasonable path to determine whether there is assigned EBS spectrum in their community and where the whitespace is available.⁵ This mapping failure, combined with the Commission’s 23-year freeze that effectively removed EBS from public awareness, has created an untenable situation where new potential educational licensees and Tribal Nations lack sufficient information and time to reasonably understand what, if any, EBS white space is available in their areas.

² Although one party submitted a white paper purporting to describe the effects of an EBS incentive auction, for reasons SHLB has previously pointed out, that submission “does not analyze evidence and data” and “should not be credited as an economic study.” Letter from John Windhausen, Jr., Executive Director, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, at 4 (filed Apr. 11, 2019).

³ Dr. Katz will be presenting his findings on May 15, 2019 as a part of the 2nd National Annual Summit on Digital Equity and Economic Inclusion. See EventZilla, *2nd National Annual Summit on Digital Equity and Economic Inclusion*, <https://events.eventzilla.net/e/2nd-national-annual-summit-on-digital-equity-and-economic-inclusion-2138727227> (last visited May 13, 2019).

⁴ See *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*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 14165, 14169–70 ¶ 6 (2004) (adopting the ‘split-the-football’ approach to EBS licensee’s coverage areas); see also Letter from Katherine Messier, Director of Development, North American Catholic Educational Programming Foundation, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, at 12 (filed Apr. 25, 2019); Letter from Mark Colwell, Voqal, to Marlene H. Dortch, Secretary, FCC, WT Docket No 18-120, at 2 (filed May 9, 2019).

⁵ See Comments of AASA, The School Superintendents Association and the Association of Educational Service Agencies at 7–8, WT Docket No. 18-120 (filed Sept. 7, 2018) (detailing the limitations and inaccuracies of ULS—including a Washington State ULS map that is “off by a factor of six”—to demonstrate that “no one knows what the unlicensed EBS white space today is—not even the Commission—because there are no maps of it”).

There is also insufficient information about current educational uses provided by EBS licensees. While there is ample evidence of robust educational and commercial benefits from all EBS licensees that filed comments in this proceeding,⁶ the Commission has collected no information from the vast majority of the nearly 1,300 licensees today since the last substantial service filing for EBS licensees in 2011—nearly a decade ago. The Commission cannot reasonably make a decision between priority windows for educational entities and a commercial auction for unassigned EBS spectrum without a thorough understanding of how existing EBS licensees are achieving both educational benefits and broadband deployment today.⁷

Furthermore, only a handful of commenters have engaged on how educational use rules could be modernized to ensure accountable educational benefits for modern EBS broadband services.⁸ The Commission lacks anything close to the comprehensive record necessary for it to move forward on critical decisions about these issues that would, ultimately, have dramatic impacts on the future of the band.

Finally, and perhaps most importantly, the Commission should not make decisions about the EBS rulemaking proceeding until the Commission and the U.S. Department of Justice resolve the uncertainty created by the pending transaction between Sprint and T-Mobile.⁹ We take no position in this filing with respect to how that transaction should be resolved. However, Sprint is currently the dominant operator in the EBS band by virtue of its lease arrangements with EBS licensees (a model long endorsed by the Commission). Some parties, for instance, have alleged that the merged company should be required to divest 2.5 GHz spectrum, which would include a certain number of EBS licenses. This could have a very significant impact on the educational institutions and students who are currently using these services. Additionally, it is not clear whether the merged parties—if allowed—will uphold existing EBS lease agreements or how that may impact EBS licensees and their end users going forward.¹⁰

Whatever the Commission and the Department of Justice decide with respect to the transaction, that decision has the potential to affect a number of critical issues raised in this

⁶ See Reply Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 4–7, WT Docket No. 18-120 (filed Sept. 7, 2018).

⁷ See Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 14, WT Docket No. 18-120 (filed Aug. 8, 2018) (“NACEPF and Mobile Beacon Comments”) (explaining that before making decisions, “the Commission first needs a full record on how this spectrum is being used to advance education across the country today and its potential to build on these benefits moving forward.”). Recognizing this dearth of information, some parties have called for additional transparency, particularly with respect to EBS lease arrangements. See, e.g., *id.* at 32–33.

⁸ See Comments of the Consortium for School Networking at 2–4, WT Docket No. 18-120 (filed Aug. 8, 2018); NACEPF and Mobile Beacon Comments at 14–28; Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition at 4–6, WT Docket No. 18-120 (filed Aug. 8, 2018); Comments of Voqal at 15–16, WT Docket No. 18-120 (filed Aug. 8, 2018).

⁹ See generally *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket 18-197.

¹⁰ See Letter from Casey Sorenson, CEO, PCs for People, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, at 1 (filed May 10, 2019).

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rulemaking proceeding. Continued uncertainty around the transaction, for example, makes it difficult to evaluate the impact of immediately eliminating educational eligibility requirements on those that currently rely on internet service from an EBS licensee. The transaction also has material implications on the functioning and outcome of any EBS auction.¹¹ Only once the transaction proceeding is resolved will interested stakeholders and, more importantly, the Commission, have the certainty needed to evaluate these impacts and determine the best path for the rulemaking.

We therefore urge the Commission to request additional comment on these issues before making decisions based on an incomplete record and while the merger transaction remains unresolved. The stakes for the EBS rulemaking are high. Days ago, over 830 schools, libraries, nonprofits, and other organizations wrote to the Commission to express the importance of preserving education in the EBS band.¹² In addition, a growing number of commercial rural operators have offered their full support for keeping EBS educational and licensing spectrum to local schools with which they partner.¹³

EBS is a real solution to the digital divide and homework gap. Broadband access for every American has never been more important—particularly for students that lack home internet access and those living in rural, unserved parts of our country. We urge the Commission to take the time needed to get EBS right.

Respectfully submitted,

/s/ Katherine Messier

Katherine Messier
Director of Development
North American Catholic Educational
Programming Foundation, Inc.
Executive Director
Mobile Beacon
2419 Hartford Ave
Johnston, RI 02919
kmessier@nacepf.net

/s/ John Windhausen, Jr.

John Windhausen, Jr.
Executive Director
Schools, Health & Libraries Broadband
(SHLB) Coalition
1250 Connecticut Ave. NW Suite 700
Washington, DC 20036
jwindhausen@shlb.org
(202) 263-4626

¹¹ See Letter from Katherine Messier, Director of Development, North American Catholic Educational Programming Foundation, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 (filed Apr. 2, 2019) (describing the overlapping issues raised by the two proceedings).

¹² Letter from Over 800 Educational, Public Interest, and Commercial Signatories to Chairman Ajit Pai, FCC, WT Docket No. 18-120 (filed May 8, 2019).

¹³ Letter from 57 Rural Broadband Operators to Marlene Dortch, FCC, WT Docket No. 18-120 (filed Apr. 30, 2019); Letter from Donald Herman, Jr. et al., Counsel, Rural Operators, to Marlene Dortch, Secretary, FCC, WT Docket No. 18-120 (filed Apr. 25, 2019).

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/s/ Angela Siefer

Angela Siefer
Executive Director
National Digital Inclusion Alliance
3000 E Main St #50
Columbus, OH 43209
angela@digitalinclusion.org

/s/ John Schwartz

John Schwartz
President
Voqal
P.O. Box 6060
Boulder, CO 80306
(303) 532-2850

/s/ Harold Feld

Harold Feld
Senior VP
Public Knowledge
1818 N St. NW, Suite 410
Washington, DC 20036
hfeld@publicknowledge.org