



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST TO EXTEND THE SUBSTANTIAL SERVICE DEADLINE FOR EDUCATIONAL BROADBAND SERVICE LICENSEES TO NOVEMBER 1, 2011

WT Docket No. 11-22

Comment Date: February 22, 2011

Reply Comment Date: March 1, 2011

On February 9, 2011, the National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”) filed a request for waiver of Section 27.14(o) of the Commission’s Rules to extend the deadline for Educational Broadband Service (“EBS”) licensees to demonstrate substantial service from May 1, 2011 to November 1, 2011.¹ NEBSA and CTN are the primary representative organizations for the EBS community.²

On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking (BRS/EBS R&O)* that revamped the band plan and the rules and policies governing the licensing of the EBS and Broadband Radio Services (“BRS”) in the 2500-2690 MHz band.³ In that proceeding, the Commission suspended construction deadlines then applicable to licensees in the band,⁴ and established a plan to transition EBS and BRS licensees to their new channel locations.⁵ The transition of the 2500-2690 MHz band is now nearly completed.⁶

In 2006, the Commission replaced the suspended construction deadlines with a requirement that all BRS and EBS licensees demonstrate substantial service by May 1, 2011.⁷ The purpose behind the

¹Request for Waiver of Section 27.14(o) of the Commission’s Rules, the National EBS Association and the Catholic Television Network (filed Feb. 9, 2011) (Waiver Request).

² *Id.* at 1.

³ 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*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O* and *FNPRM* as appropriate).

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, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 6722, 6805 ¶¶ 200-201 (2003) (*NPRM*).

⁵ *BRS/EBS R&O*, 19 FCC Rcd 14165, 14197-14198 ¶¶ 72.

⁶ Waiver Request at 2-3.

⁷ 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,

requirement is to “ensure prompt delivery of service to rural areas, . . . prevent stockpiling or warehousing of spectrum by licensees or permittees, and . . . promote investment in and rapid deployment of new technologies and services.”⁸

NEBSA and CTN state that although they anticipate that many EBS licensees will submit their substantial service showings by May 1, 2011, a brief extension of the substantial service deadline is requested because in some areas of the country, primarily non-urban areas, EBS facilities are not yet fully constructed or operational.⁹ NEBSA and CTN state that in some cases, commercial operators have deployed the EBS radio portion of a network, but connectivity to the Internet is delayed by unexpected delays or difficulties in obtaining equipment or timely securing T1 or other backhaul services from other providers.¹⁰ In other cases, local permitting delays have reportedly hampered cell siting efforts.¹¹ NEBSA and CTN claim that in other cases, systems have recently been or soon will be made operational, but there will not be enough time for licensees to fully implement their educational use plans.¹² Clearwire, a *de facto* lessee of a significant portion of EBS spectrum, supports the request.¹³

Accordingly, we seek comment on the request to extend the deadline for EBS licensees to demonstrate substantial service from May 1, 2011 to November 1, 2011. We invite comment on whether an extension is appropriate, and, if so, whether the six month extension requested by NEBSA and CTN is the appropriate length.

Procedural Matters

Comments on the request are due **February 22, 2011**. Reply comments are due **March 1, 2011**. All filings should reference the docket number of this proceeding, WT 11-22.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹⁴ Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list

et al., WT Docket No. 03-66, *et al.*, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21FCC Rcd 5606, 5733 ¶ 303 (2006) (*BRS/EBS 2nd R&O*). BRS Basic Trading Area (BTA) authorizations granted after November 6, 2009 have four years from the date of grant to demonstrate substantial service and need not make any showing at this time. 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, WT Docket No. 03-66, *Third Report and Order*, 25 FCC Rcd 7743 (2010).

⁸*BRS/EBS 2nd R&O*, 21 FCC Rcd at 5720 ¶ 278, *citing* 47 USC §309(j)(4)(B).

⁹ Waiver Request at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Ex Parte* Letter from Cathleen A. Massey, Counsel for Clearwire, to Marlene H. Dortch, Federal Communications Commission (dated Feb. 9, 2011).

¹⁴ See 47 C.F.R. §§ 1.1200(a), 1.1206.

the subjects discussed.¹⁵ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁶

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, as follows:

-Effective December 28, 2009, all hand-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** This is the **ONLY** location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. The Commission's former filing location at 236 Massachusetts Ave., N.E., is permanently closed.

-Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

-U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com.

The request, and comments and reply comments filed in response to this *Public Notice*, will be available for public inspection and copying during business hours via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT 11-22. They may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail FCC@BCPIWEB.com.

¹⁵ *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

¹⁶ *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in Section 1.1206(b). *See* 47 C.F.R. § 1.1206(b).

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For further information, contact Nancy M. Zaczek, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0274, Nancy.Zaczek@fcc.gov.

Action by the Chief, Broadband Division, Wireless Telecommunications Bureau.

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