

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)
THE MONTEREY COUNTY) File No. 0007355697
SUPERINTENDENT OF SCHOOLS)
For a New Educational Broadband Service Station)

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2016

Released: December 20, 2016

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 22, 2016, the Monterey County Superintendent of Schools (MCSS or Superintendent) filed an application and a waiver request in support of that application for four new Educational Broadband Service (EBS) channels in the area of Salinas, California. In this Memorandum Opinion and Order, subject to certain conditions, we grant to MCSS a waiver of the filing freeze on new EBS applications and a waiver of Section 1.913(b)2 of the Commission’s rules to permit manual filing of its applications.

II. BACKGROUND

2. 2500-2690 MHz Band Generally. In developing regulatory policies in the 2500-2690 MHz band over the last several decades, the Commission has been cognizant of this band’s potential to host a variety of services. In 1963, the Commission established the Instructional Television Fixed Service (ITFS) in the 2500-2690 MHz band,3 envisioning that it would be used for transmission of instructional material to accredited public and private schools, colleges and universities for the formal education of students.4 In 1983, in response to the demand for additional spectrum for delivery of video entertainment programming to subscribers, the Commission re-allotted eight ITFS channels (the E and F channel

1 File No. 0007355697 (Application); Monterey County Superintendent of Schools . . . FCC Form 601: Application for Educational Broadband Service (“EBS”) License (Waiver Request) (filed July 22, 2016).

2 47 CFR § 1.913(b).

3 See Educational Television, Report and Order, 39 FCC 846 (1963), recon. denied 39 FCC 873 (1964) (ETV Decision).

4 See Amendment of the Commission’s Rules With Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems, Report and Order, 48 Fed. Reg. 33873, 33875, para. 9 (1983) (1983 R&O) (citing ETV Decision, 39 FCC 846, 853, para 25).

blocks) and associated response channels for use by the Multipoint Distribution Service (MDS).⁵ In conjunction with this re-allotment, the FCC permitted ITFS licensees to lease “excess capacity” on their facilities to commercial entities.⁶

3. In April 2003, the Commission proposed new technical rules and a new band plan for ITFS and MDS spectrum (changing the service names to EBS and Broadband Radio Service (BRS), respectively).⁷ At the same time, it implemented a filing freeze with respect to all applications for new BRS and EBS licenses, as well as for major modifications of those licenses, in order to permit the orderly and effective resolution of issues in the BRS/EBS proceeding.⁸ In August 2003, the Commission modified the freeze by permitting the filing of applications for new BRS licenses and major modifications of those licenses.⁹ The Commission also permitted the filing of applications for major modifications of EBS licenses, but maintained the filing freeze with respect to applications for new EBS licenses.¹⁰ On June 10, 2004, the Commission adopted new rules that initiated a fundamental restructuring of the 2500-2690 MHz band in order to provide both existing EBS and BRS licensees and potential new entrants greater flexibility in order to encourage the highest and best use of spectrum domestically and internationally.¹¹ In 2008, the Commission sought comment on how to license unassigned EBS spectrum.¹²

4. *Monterey County Superintendent of Schools Application.* The Superintendent is the elected official responsible for oversight of schools in the Monterey County, California.¹³ MCSS administers and works through the Monterey County Office of Education (MCOE), one of 58 county offices of education

⁵ See *Amendment of Parts 2, 21, 74 and 94 of the Commission’s Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, Report and Order, 94 FCC 2d 1203 (1983) (*First Leasing Decision*).

⁶ *Id.* at 1206-07, para. 4.

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*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, 6811, para. 226, 6825, para. 260 (2003) (*NPRM and MO&O*).

⁸ See *NPRM and MO&O*, 18 FCC Rcd at 6811, para. 226, 6825, para. 260.

⁹ 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 Bands*, Second Memorandum Opinion and Order, 18 FCC Rcd 16848, para. 1 (2003) (*Second MO&O*).

¹⁰ *Id.*

¹¹ 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 (2004) (*BRS/EBS R&O and FNPRM*).

¹² 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*, 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, 6060-68, paras. 180-204 (2008) (*Second FNPRM*).

¹³ The position of County Superintendent was established in the California Constitution. CAL. CONST. art. IX, § 3.

throughout California.¹⁴ The Superintendent “provides leadership, support and service to fulfill the mission of public education, and serves as a liaison between Monterey County’s 24 school districts and the state.”¹⁵ The Superintendent and the MCOE provide business, professional development, credentialing, technology and student support services to approximately 76,000 students, 3,500 teachers and 2,000 support staff across 24 local school districts, two community colleges and a state university within Monterey County.¹⁶

5. MCSS is the current licensee of EBS station WNC366 on the G channel group, with a geographic service areas (GSA) that covers the northern half of Monterey County. In 2011, MCSS operated a wide-area network (WAN) on the channels that utilize point-to-point links to “allow Internet utilization at the District offices and associated accredited schools for staff, faculty and students in furtherance of the schools’ educational mission.”¹⁷

6. On June 29, 2016, MCSS applied for Special Temporary Authority (STA) to operate the B group EBS channels within a defined area covering portions of Monterey and San Benito Counties that were not within the GSA of any other licensed co-channel EBS station.¹⁸ The Wireless Telecommunications Bureau (“Bureau”) granted the STA on October 11, 2016 and assigned call sign WQYI282.¹⁹

7. On July 22, 2016, MCSS filed the instant application for regular authority for the B group channels within the GSA authorized by the STA²⁰ and a request for waiver of the EBS filing freeze and the electronic filing requirement of Section 1.913(b).²¹ In its application, MCSS explains that it seeks a regular authorization to construct and operate a Long Term Evolution (LTE) network to provide “broadband educational services to underserved students and MCSS faculty and staff located in the Salinas, California area.”²² According to 2014 U.S. census data, the City of Salinas ranks below both national and California averages for the percentage of the population with a high school degree or higher.²³ Further, of the 41,000 student subscribers within the service area of the proposed network, “it is

¹⁴ Monterey County Office of Education, 2014-15 Monterey County Education Report to the Community at 2, <http://www.mcoeannualen.org/> (MCOE Annual Report); Monterey County Office of Education, About MCOE, <http://www.montereycoe.org/about/index> (last visited Nov. 4, 2016).

¹⁵ MCOE Annual Report at 2.

¹⁶ Waiver Request at 1; Monterey County Office of Education, About MCOE, <http://www.montereycoe.org/about/index> (last visited Nov. 4, 2016).

¹⁷ See Monterey County Superintendent of Schools, WNC366 Demonstration of Substantial Service, File No. 0004905275 (filed Oct. 27, 2011).

¹⁸ File No. 0007328902 (filed June 29, 2016).

¹⁹ File No. 0007328902 (granted Oct. 11, 2016).

²⁰ Application.

²¹ Waiver Request. Section 1.913(b) of the Commission’s Rules states in relevant part that “all applications and other filings using FCC Forms 601 through 608 or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS.” 47 CFR § 1.913(b).

²² Waiver Request at 1.

²³ 2016 Waiver Request at 2. See United States Census Bureau, American Fact Finder, Educational Attainment 2010-2014 American Community Survey 5-Year Estimates, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1501&src=pt

likely that 90% or more would qualify for Lifeline as most are National Student Lunch Program Students.”²⁴

8. In its waiver, MCSS states it will use the additional EBS licenses “solely for the provision of broadband educational services,” and “does not intend to use this authorization for any commercial purposes, nor does it intend to lease any spectrum associated with this authorization to another entity.”²⁵ The Superintendent is seeking additional EBS licenses because it can find no other cost-effective option to provide these services.²⁶ The proposed GSA does not overlap with the GSA of any currently licensed co-channel Broadband Radio Service or EBS stations.²⁷ Finally, MCSS indicates its commitment to meeting the substantial service requirement for the GSA as required by section 27.14(o) of the Commission’s rules within two years of the grant date of its Application,²⁸ and included with its Application a vendor LTE equipment and deployment proposal.²⁹

9. MCSS’s Application was listed on public notice as accepted for filing on August 24, 2016.³⁰ No petitions to deny or other oppositions were filed.

III. DISCUSSION

10. As noted, MCSS seeks both a waiver of the filing freeze on new EBS applications and a waiver of the electronic filing requirement for such applications, to permit it to use available EBS channels to operate a LTE network for the provision of broadband educational services.³¹ The Commission may grant a request for a waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or

(last visited Nov. 4, 2016) (In 2014, the percentage of the population 25 years and older to graduate high school or higher is 86.3% nationwide, 81.5% in California, and 61.1% in Salinas).

²⁴ 2016 Waiver Request at 2. Lifeline provides discounted stand-alone broadband service and bundled voice and data service packages to low-income consumers. See FCC, Lifeline Program for Low-Income Consumers, <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Nov. 4, 2016). The National Student Lunch Program provides free or discounted meals to children from families at or below 185 percent of the poverty level. See U.S. Dept. of Agriculture, Food and Nutrition Serv., National School Lunch Program Fact Sheet, <http://www.fns.usda.gov/sites/default/files/NSLPFactSheet.pdf> (last visited Nov. 1, 2016). The National Student Lunch Program currently is among the federal or state program establishing eligibility for Lifeline benefits, but it will be removed from the default federal assistance eligibility on December 1, 2016. See *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4021, para. 167 (2016).

²⁵ Waiver Request at 1.

²⁶ Waiver Request at 2.

²⁷ Waiver Request at 1.

²⁸ Waiver Request at 2. See 47 CFR 27.14(o).

²⁹ Application at Exhibit 2.

³⁰ See *Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing*, Report No. 11628, Public Notice, (rel. Aug. 24, 2016) at 3.

³¹ See Waiver Request at 1.

contrary to the public interest, or the applicant has no reasonable alternative.³² As discussed below, we conclude that MCSS has met the waiver standard with respect to both of its requests, and accordingly we grant its Waiver Request, subject to the conditions outlined below.

11. We conclude that application of the filing freeze would be inequitable and contrary to the public interest under the unique circumstances presented by MCSS. Specifically, we find that, absent access to the additional channel of EBS spectrum, MCSS would face substantial challenges in providing educational content to all of the members of its school community, including underserved students, faculty and administrators. As MCSS noted in its Waiver Request, the GSA includes areas where broadband access may be unavailable or unaffordable.³³ Furthermore, given the urgent need for educational broadband service in these areas, we do not believe that asking MCSS to wait until the Commission develops a new mechanism for assigning unassigned EBS spectrum is appropriate. We therefore conclude that MCSS has justified a waiver of the EBS filing freeze under the second prong of the waiver standard.

12. We will impose the same conditions on the grant of this authorization that the Bureau imposed in previous Waiver Orders.³⁴ In this regard, we adopt as a license condition MCSS's commitment in the current Application not to lease its spectrum.³⁵ Section 27.1201(a) of the Commission's Rules states that a "license for an Educational Broadband Service station will be issued only to an accredited institution...engaged in the formal education of enrolled students."³⁶ MCSS is such an institution and has indicated that it will use the proposed EBS system solely to meet the educational needs of the schools in the county.³⁷ The provision of educational broadband services via a new EBS license would be consistent with the Commission's view that, "the public interest favors preserving [EBS] spectrum for licensing to [educators] and that doing so will further the educational objectives that led to the establishment of [EBS]."³⁸ We find that MCSS's plan to put the spectrum to use solely for educational purposes and its commitment not to lease the spectrum constitute unique circumstances that will ensure "that the spectrum is used for educational purposes"³⁹ justifying a waiver of the filing freeze.

13. We place the further condition on MCSS's license that its GSAs shall not include any area within the GSA of any previously licensed co-channel EBS station.⁴⁰ In addition, we recognize that granting these waivers will result in MCSS obtaining valuable spectrum. While we believe that there are substantial public interest benefits to granting these waivers, we also believe it appropriate to place

³² 47 CFR § 1.925(b)(3).

³³ Waiver Request at 2.

³⁴ See generally *Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station*, Memorandum Opinion and Order, 23 FCC Rcd 11832 (WTB 2008) (*2008 NMU Waiver Order*).

³⁵ See Waiver Request at 1.

³⁶ 47 CFR § 27.1201(a).

³⁷ Waiver Request at 1.

³⁸ See *Applications of Gateway Telecom LLC d/b/a StratusWave Communications for New Educational Broadband Service Stations on the A and B Group Channels in Centerville, Ohio; and A and B Group Channels in Arden, West Virginia*, Memorandum Opinion and Order, 22 FCC Rcd 15789, 15796, para. 15 (2007).

³⁹ See *2008 NMU Waiver Order*, 23 FCC Rcd at 11837, para. 13.

⁴⁰ As indicated in the Waiver Request, MCSS has not requested authorization for any EBS spectrum already authorized to another entity. Waiver Request at 1 n.2.

conditions on the waiver grant to ensure that the anticipated public interest benefits materialize. Thus, given the lack of broadband alternatives in the areas in questions, we believe it is appropriate to require MCSS to build out on an accelerated schedule. Consistent with the commitment MCSS has made,⁴¹ we will require MCSS to provide substantial service pursuant to Section 27.14(o) within two years from the date the Applications are granted by the Bureau.⁴²

14. With respect to the electronic filing requirement contained in Section 1.1913(b) of the Commission's Rules,⁴³ we observe that the Commission's electronic Universal Licensing System (ULS) is not currently configured to accept applications such as the one submitted by MCSS. We therefore conclude that, in light of these circumstances, application of the rule would be inequitable and contrary to the public interest because it would be unfair to reject an application for failure to file electronically when electronic filing capability is not available. We therefore grant MCSS a waiver to permit manual filing of its Application.

15. Based upon the evaluation of the record before us, we conclude that MCSS has demonstrated that continued application of the filing freeze and electronic filing requirement would be inequitable, unduly burdensome and contrary to the public interest, given the unique circumstances of this case. We also find that waiving the filing freeze and the electronic filing requirement will facilitate the provision of educational material through a broadband network in the area of Salinas, California and will further the Commission's goal of ultimately providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location.⁴⁴ We note that the waivers granted in the instant *Memorandum Opinion and Order* are based on the unique circumstances of this case, and do not prejudice the Commission's consideration of the appropriate mechanism generally for licensing unassigned EBS spectrum.⁴⁵

IV. CONCLUSION AND ORDERING CLAUSES

16. For the reasons discussed above, we grant MCSS's requests for waiver of (1) the filing freeze that was imposed by the Commission on new EBS applications in the Commission's April 2003, *NPRM and MO&O*, and, (2) the electronic filing requirement in Section 1.1913(b) of the Commission's Rules. We also direct the Broadband Division to process MCSS's Application in accordance with the requirements set forth in this *Memorandum Opinion and Order* and the Commission's rules.

17. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3), that the waiver requests filed by the Monterey County Superintendent of Schools on July 22, 2016 in connection with File No. 0007355697 ARE GRANTED, subject to the conditions noted below.

⁴¹ Waiver Request at 2.

⁴² 47 CFR § 27.14(o).

⁴³ See 47 CFR § 1.913(b).

⁴⁴ FCC, Strategic Plan for the FCC for Fiscal Years 2015 through 2018, at 11 (2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-331866A1.pdf. In turn, this goal is based upon the statutory requirement that the Commission "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." 47 U.S.C. § 1302(a).

⁴⁵ See generally *Second FNPRM*, *supra*.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 309 that the licensing staff of the Broadband Division, Wireless Telecommunications Bureau SHALL PROCESS File No. 0007355697 in accordance with this *Memorandum Opinion and Order* and the Commission's Rules.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309 that the following conditions SHALL BE IMPOSED on any authorizations issued to Monterey County Superintendent of Schools as a result of the application it has filed:

The Geographic Service Area of this station shall not include any area within the GSA of any previously licensed co-channel EBS station.

The Monterey County Superintendent of Schools shall not lease any spectrum associated with this license to another entity.

The Monterey County Superintendent of Schools shall demonstrate substantial service within two years after the grant of their application.

20. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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