

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

In the Matter of Applications of)
)
KINGS COUNTY SUPERINTENDENT OF) File Nos. 0007949111 and 0007949112
SCHOOLS)
)
For New Educational Broadband Service Stations)
)

MEMORANDUM OPINION AND ORDER

Adopted: May 16, 2019

Released: May 16, 2019

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 3, 2017, the Kings County Superintendent of Schools (KCSS) filed applications for permanent authorization to use additional Educational Broadband Service (EBS) channels for areas within Kings County, California already permanently licensed to KCSS on other EBS channels.1 In this Memorandum Opinion and Order, subject to certain conditions, we grant the application and necessary waivers.

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,2 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.3 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 The application was filed with requests for waiver of the Commission’s filing freeze on new EBS applications and of Section 1.913(b) of the Commission’s rules to permit manual filing of the application. See Kings County Superintendent of Schools: Applications for Educational Broadband Service (“EBS”) License, File Nos. 0007949111 and 0007949112 (Application) and Request for Waiver (2017 Waiver Request) (filed Oct. 3, 2017).

2 See Amendment of Parts 2 and 4 of the Commission’s Rules and Regulations to Establish a New Class of Educational Television Service, Report and Order, 39 FCC 846 (1963), recon. denied, 39 FCC 873 (1964) (ETV Decision).

3 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, 852-53 para. 25).

blocks) and associated response channels for use by the Multipoint Distribution Service (MDS).⁴ In conjunction with this re-allotment, the FCC permitted ITFS licensees to lease “excess capacity” on their facilities to commercial entities.⁵

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), and it imposed a freeze on all applications for new BRS and EBS licenses.⁶ Subsequently, the Commission lifted the freeze on applications for new BRS licenses, but maintained it for applications for new EBS licenses.⁷ In June 2004, the Commission adopted new rules fundamentally restructuring the 2500-2690 MHz band, but left the EBS filing freeze in place.⁸ In 2008, the Commission sought comment on how to license unassigned EBS spectrum.⁹

4. Last year, the Commission issued a notice of proposed rulemaking proposing “to allow more efficient and effective use of [the 2.5 GHz] band by providing greater flexibility to current EBS licensees as well as providing new opportunities for additional entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband.”¹⁰ In the proceeding, the Commission sought comment on establishing one or more local priority filing windows for unassigned 2.5 GHz spectrum, following which any remaining 2.5 GHz spectrum would be made available for flexible use via competitive bidding.¹¹ The Commission also sought comment on other approaches to rationalizing and opening the 2.5 GHz band for more productive and intensive use.¹²

5. *Kings County Applications.* KCSS is the official name for the Kings County Office of Education, one of fifty-eight county offices of education in the State of California.¹³ KCSS provides technical assistance, curriculum and instructional support, staff development, financial support services, and oversight to all Kings County public school districts.¹⁴ KCSS delivers education to more than 27,000

⁴ 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*).

⁵ *Id.* at 1206-07 para. 4.

⁶ 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 (2003) (*NPRM and MO&O*).

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*, Second Memorandum Opinion and Order, 18 FCC Rcd 16848 para. 1, 16853, para. 13 (2003) (*Second MO&O*).

⁸ *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*).

⁹ *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, WT Docket No. 03-66, 23 FCC Rcd 5992, 6060-6068 paras. 180-204 (2008) (*Second FNPRM*).

¹⁰ *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687, 4687-88, para. 1 (2018) (*2.5 GHz NPRM*).

¹¹ *Id.* at paras. 26-51.

¹² *Id.* at paras. 58-62.

K-12 public school students in the county. In addition, KCSS is itself an accredited educational institution, providing direct instruction to students by operating four schools: two alternative schools for Court and Community School, and two special education schools providing for pupils with special needs throughout Kings County.¹⁵

6. KCSS is the current licensee of EBS station WNC785 on the B channel group, with a geographic service area (GSA) that covers the eastern-most portion of Kings County.¹⁶ KCSS also utilizes capacity on the G channel group channels of EBS Station WNC790 within the same portion of Kings County under a cooperative arrangement with neighboring Tulare County Superintendent of Schools, which is the licensee of WNC790.¹⁷ In 2016, the Wireless Telecommunications Bureau's (Bureau) Broadband Division granted KCSS permanent authority to operate B and G group channels in those portions of Kings County not within the GSA of any other licensed co-channel EBS station.¹⁸

7. On April 13, 2017, KCSS applied for Special Temporary Authority (STA) to operate the A, C, and D group EBS channels in the portions of Kings County not within the GSA of any other licensed co-channel EBS station.¹⁹ The Bureau granted STAs on the A group (call sign WQZH200), on the C group (call sign WQZH202) and D group (call sign WQZH201) on May 11, 2017.²⁰ The Bureau placed conditions on these grants, based on commitments made by KCSS, including a commitment not to lease any of the spectrum.²¹

8. On October 3, 2017, KCSS filed the instant Applications, seeking permanent authority for the A and C group channels that it had been authorized to use under the STA, and asking for waiver of the EBS filings freeze and the electronic filing requirement of Section 1.913(b) of the Commission's rules.²² KCSS explains that it has constructed and is now operating its wireless broadband system on the A and C group channels, and reports that the additional capacity offered by these groups appears to have successfully resolved capacity problems it had previously experienced.²³

9. KCSS uses its EBS spectrum to operate a seven-site LTE network that offers educational broadband services within its coverage area. As of October 2017, this wireless broadband system was providing service to about 2,300 students, plus 1,150 private account holders including faculty and staff.²⁴ KCSS states that expansion of the system with additional channels will permit it to provide wireless broadband service to virtually all of the 27,000 public school students and 5,500 faculty and staff in Kings

¹³ 2017 Waiver Request at 1.

¹⁴ 2017 Waiver Request at 1-2.

¹⁵ 2017 Waiver Request at 2.

¹⁶ 2017 Waiver Request at 2.

¹⁷ Request for Waiver (filed August 17, 2016) (2016 Waiver Request) at 2. *See* Substantial Service Showing of WNC790 (File No. 0004617308, granted April 29, 2011).

¹⁸ *Application of Kings County Superintendent of Schools For New Educational Broadband Service Stations*, Memorandum Opinion and Order, 31 FCC Rcd 13281 (WTB BD 2016) (*KCSS 2016 Waiver Order*).

¹⁹ File Nos. 0007740209, 0007740210, and 0007740211 (filed Apr. 13, 2017) (2017 STA Applications).

²⁰ 2017 STA Applications (granted May 11, 2017).

²¹ *See* 2017 STA Applications (granted May 11, 2017).

²² KCSS reports that it has not yet deployed the D group channels under its STA. *See* 2017 Waiver Request at 3 n.4.

²³ 2017 Waiver Request at 2-3.

²⁴ 2017 Waiver Request at 3.

County, and their families.²⁵ KCSS partners with local school districts that distribute mobile routers and computing devices to students, many of whom come from lower-income families. In many areas of Kings County, these mobile routers connected to the KCSS network may be the only Internet access available to these students in the home. Permanent access to additional EBS channels will enable KCSS to extend its LTE service to additional school districts in the county, providing more students, families, faculties and staff with access to broadband.²⁶

10. Following deployment of the existing KCSS LTE network and the provision of wireless broadband services to students, KCSS has found that student suspensions and failures have decreased, the number of students being promoted and making the honor roll has increased, the number of high school students taking and passing college level courses has increased, and there has been significant improvement in student reading and math proficiency. In addition to these substantial educational benefits, school districts that work with KCSS have launched applications that have increased parental involvement.²⁷ In addition, the city of Avenal is now partnering with KCSS to make KCSS's wireless broadband service available to the entire community. To that end, the city recently dedicated the Avenal Technology Center, a facility intended to help members of the communication develop new skills and increase opportunities for success.²⁸

11. Included as attachments to the 2017 Applications are letters of support from Superintendent David East of the Reef-Sunset Unified School District and David L. Goldsmith of Hanford Elementary School District.²⁹ KCSS's Applications were listed on public notice as accepted for filing on October 18, 2017.³⁰ No petitions to deny or other oppositions were filed.

III. DISCUSSION

12. As noted, KCSS seeks both a waiver of the filing freeze on new EBS applications and a waiver of the electronic filing requirement for such applications contained in Section 1.913(b) of the Commission's, to provide it permanent authorization to use the A and C group EBS channels to enhance capacity and alleviate congestion in its LTE network, which it operates for the provision of educational and instructional material.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 contrary to the public interest, or the applicant has no reasonable alternative.³² As discussed below, we conclude that KCSS has met the second prong of the waiver standard with respect to its requests, and accordingly, we grant its Waiver Requests, subject to the conditions outlined below.

13. We conclude that application of the filing freeze would be inequitable and contrary to the public interest under the unique circumstances presented by KCSS. Other than KCSS's network, there is limited broadband available in Kings County, and where such service is available, it is not affordable for

²⁵ 2017 Waiver Request at 3-4.

²⁶ 2017 Waiver Request at 4.

²⁷ 2017 Waiver Request at 5.

²⁸ 2017 Waiver Request at 6.

²⁹ Applications, Exhibits A and C.

³⁰ Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, Report No. 12666, *Public Notice* (rel. Oct. 18, 2017) at 3.

³¹ 2017 Waiver Request at 8-9.

³² 47 CFR § 1.925(b)(3).

much of the local community.³³ In addition, there are no other EBS licensees that cover these areas.³⁴ Without other EBS licensees in these areas, KCSS cannot attempt to acquire or lease spectrum from another EBS licensee. It therefore has no alternative at this time other than asking the Commission for permanent access to these additional channels. Furthermore, given the urgent need for continued and additional broadband service in Kings County, and the fact that denying the waiver would require KCSS to reduce the capacity and service area of a broadband service on which students and other residents of Kings County currently rely, we do not believe it is appropriate to ask KCSS to wait until the Commission makes spectrum available pursuant to mechanisms that may be adopted in the 2.5 GHz proceeding. We therefore conclude that KCSS has justified a waiver of the EBS filing freeze under the second prong of the waiver standard.

14. To ensure that grant of the requested waivers will produce the public interest benefits we anticipate, we will place three conditions on the waiver grant, all of which are consistent with conditions imposed on prior grants of waivers of the EBS filing freeze.³⁵ First, KCSS's license shall include a condition that its Geographic Service Areas (GSAs) shall not include any area within the GSA of any previously licensed co-channel EBS station.³⁶ Second, to ensure that the licensed spectrum is quickly put to use to serve a community that lacks broadband alternatives, and as KCSS has already begun deployment and operations on these channels,³⁷ we will require KCSS to provide substantial service pursuant to Section 27.14(o) of the Commission's Rules within two years from the date that the license is granted by the Bureau.³⁸ Third, we adopt as a license condition KCSS's continued commitment not to lease its spectrum.³⁹

15. With respect to the electronic filing requirement contained in Section 1.1913(b) of the Commission's Rules,⁴⁰ we observe that the Commission's electronic ULS is not currently configured to accept applications such as the ones submitted by KCSS. 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 KCSS a waiver to permit manual filing of its Applications.

³³ 2017 Waiver Request at 4.

³⁴ 2011 STA Applications, Exhibit at 3.

³⁵ See, e.g., *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); *Application of The Nisqually Indian Tribe*, Memorandum Opinion and Order, 28 FCC Rcd 15569 (WTB BD 2013); *The Board of Trustees of Northern Michigan University*, Memorandum Opinion and Order, 28 FCC Rcd 15576 (WTB BD 2013); *The Board of Trustees of Northern Michigan University*, Memorandum Opinion and Order, 28 FCC Rcd 15583 (WTB BD 2013); *Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station*, Memorandum Opinion and Order, 31 FCC Rcd 3371 (WTB BD 2016).

³⁶ As indicated in the Waiver Request, KCSS has not requested authorization for any EBS spectrum already authorized to another entity. 2017 Waiver Request at 8-9.

³⁷ 2017 Waiver Request at 2-3.

³⁸ 47 CFR § 27.14(o).

³⁹ See *supra* para. 4, Licenses for WQZH200, WQZH201, and WQZH202. We note that the 2.5 GHz NPRM proposed to eliminate restrictions on leasing imposed on licenses issued pursuant to a waiver of the filing freeze. 2.5 GHz NPRM, 33 FCC Rcd at 4694, para. 21. If the Commission ultimately adopts that proposal, this condition shall be null and void.

⁴⁰ 47 CFR § 1.913(b).

IV. CONCLUSION AND ORDERING CLAUSES

16. For the reasons discussed above, we grant KCSS'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 Kings County Superintendent of Schools' Applications 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 CFR § 1.925(b)(3), that the waiver requests filed by Kings County Superintendent of Schools on August 17, 2016 in connection with File Nos. 0007949111 and 0007949112 ARE GRANTED, subject to the conditions noted below.

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 Nos. 0007949111 and 0007949112 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 authorization issued to Kings County Superintendent of Schools as a result of the applications 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 Kings County Superintendent of Schools shall demonstrate that it has met the substantial service requirement contained in 47 CFR § 27.14(o) within two years after the grant of their applications.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau