

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)
)
CHOICE COMMUNICATIONS LLC) File No. 0006706822
)
Application to Extend Special Temporary)
Authority for WQUT992 on EBS Channels)
On C and D Groups in U.S. Virgin Islands)

To: Secretary, Federal Communications Commission
Attn: Chief, Broadband Division, Wireless Telecommunications Bureau

OBJECTION TO APPLICATION

The National EBS Association (“NEBSA”) and the Catholic Technology Network (“CTN”) respectfully object to the above-referenced application by Choice Communications LLC (“Choice”), which seeks to extend Special Temporary Authority (“STA”) for its operation of facilities on the Educational Broadband Service (“EBS”) C and D Channel Groups throughout the U.S. Virgin Islands. Choice should not have received a STA under call sign WQUT992 in the first place given Choice’s broken commitment to the Commission, NEBSA, and CTN that its “temporary” use of the channels would cease no later than 2009. Choice should not now be rewarded for its broken commitment by any extension of the STA for WQUT992 – especially since it has operated illegally on those channels for nearly five years. An extension of the STA now would amount to *de facto* licensing of EBS spectrum to an ineligible commercial entity.¹

¹ NEBSA and CTN want to see full utilization of EBS spectrum throughout the country at the earliest possible time. For this reason, NEBSA and CTN have worked cooperatively with the Wireless Communications Association International and other stakeholders to develop a consensus proposal to license all remaining vacant EBS spectrum nationwide. The consensus proposal was submitted to the Commission on June 6, 2014 in WT Docket No. 03-66. Adoption of the consensus proposal will result in prompt licensing of remaining EBS spectrum to eligible entities.

Background

NEBSA and CTN are non-profit organizations that represent a large segment of the EBS community. Both organizations have been leading participants for decades in proceedings relating to EBS, including the adoption of rules and policies for licensing of EBS white space. Thus, NEBSA and CTN have a significant and legitimate interest in the processes and rules by which new EBS channels are applied for and authorized.

Choice operates a wireless network that relies in part on transmissions in the 2.5 GHz band pursuant to Choice licenses in the Broadband Radio Service (“BRS”) and the EBS (pursuant to licenses it obtained under an old, no-longer-available, commercial licensing rule) and its leasing of excess capacity on an EBS station.

In 2008, NEBSA and CTN opposed an STA application by Choice (File No. 0003487551) seeking the same authorization as Choice now seeks – to operate on the C and D groups in the USVI. NEBSA and CTN noted that Choice had been granted a commercial authorization for the EBS A and B groups under the old rule predicated on the C and D groups remaining available for educational applicants, that Choice was not eligible under the rules to obtain permanent authorization on any additional EBS channels, and therefore Choice should not be eligible for an STA on these channels.²

Ultimately, to accommodate Choice’s claimed temporary and purely transitional need for the channels, NEBSA, CTN, and Choice reached an agreement under which NEBSA and CTN consented to the grant of a six-month STA on the C and D groups, with no more than one renewal term of six months, after which Choice was required to cease all use of the channels.³

² See NEBSA-CTN letter of objection dated September 15, 2008 attached as Exhibit A.

³ See NEBSA-CTN conditional consent letter dated October 10, 2008 attached as Exhibit B.

Pursuant to that settlement, the Commission granted a STA under call sign WQJL761 for six months and, on Choice's further application for an extension, granted a STA for an additional six months ending October 20, 2009. Although Choice had agreed to cease all operations on the channels as of that date, we now know that, "due to the mistaken assumption that the STA remained in effect" (as Choice phrases it in its most recent filing), Choice operated illegally on the C and D channels continuously from the expiration of the extended WQJL761 STA in 2009 until the Commission granted the WQUT992 STA in 2014.

Argument

NEBSA and CTN have consistently objected to applications by commercial entities seeking direct FCC authorization to use EBS spectrum. Section 27.1201(a) of the Commission's rules provides that EBS licenses are reserved for accredited institutions and governmental organizations engaged in the formal education of enrolled students and nonprofit educational organizations serving such institutions and governmental organizations. Choice is not qualified under Section 27.1201(a) to hold an EBS license.

The fact that Choice has requested temporary, rather than permanent, authority does not justify grant of the requested STA. STAs for EBS spectrum should address emergency situations where spectrum needs to be used temporarily to meet critical educational needs. STAs are not intended as a means of bypassing the Commission's basic eligibility requirements or authorizing permanent operations, which in retrospect appears to be Choice's intent notwithstanding its 2008 commitment to the Commission, NEBSA, and CTN to the contrary. Choice is not eligible for permanent EBS licenses, and it should not be found to be eligible for STAs on EBS spectrum.⁴

⁴ See, *Dakota Central Telecommunications Cooperative, et al.*, 24 FCC Rcd 4729, 4738 (WTB 2009) (Bureau denying request for STA for EBS channels to for-profit entity because "DCTC is not eligible to
continued...

Choice should not have been rewarded last year for its illegal operations with the grant of another STA, and that STA certainly should not now be extended.

Conclusion

With rare exceptions where temporary use of EBS spectrum may be justified for *bona fide* educational purposes, NEBSA and CTN believe that authorizations for vacant EBS spectrum should be granted only pursuant to permanent licensing rules, and not pursuant to *ad hoc* STA requests. NEBSA and CTN also oppose licensing any non-EBS eligible entity on EBS spectrum under any circumstances. Choice should not now be rewarded for years of illegal operations on EBS channels by the grant of any STA for the very same channels. For the foregoing reasons, NEBSA and CTN object to the Choice application and urge that it be dismissed or denied.

Respectfully submitted,

NATIONAL EBS ASSOCIATION

THE CATHOLIC TECHNOLOGY NETWORK

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August 4, 2015

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hold spectrum in the EBS, where eligibility is limited to educational institutions and qualified non-profit educational organizations”).

CERTIFICATE OF SERVICE

I, Jessica Barrow, certify that I have this 4th day of August, 2015, served true copies of the foregoing "Objection to Application" of the National EBS Association and Catholic Technology Network by hand delivery or first class United States mail, postage prepaid, or by email, upon the following:

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Broadband Division
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/s/ Jessica Barrow

Jessica Barrow

Exhibit A

**NATIONAL EBS ASSOCIATION
AND
CATHOLIC TELEVISION NETWORK**

September 15, 2008

VIA ULS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: File No. 0003487551
Application of Choice Communications, L.L.C. for Special Temporary
Authorization for EBS Channels C1-C4 and D1-D4 at Charlotte Amalie, U.S.
Virgin Islands

Dear Ms. Dortch:

The National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”) oppose the above-referenced application filed by Choice Communications, L.L.C. (“Choice”) for Special Temporary Authorization (“STA”) to operate a commercial wireless system on Educational Broadband Service (“EBS”) channels C1-C4 and D1-D4 at Charlotte Amalie, U.S. Virgin Islands.¹

NEBSA is a non-profit, professional organization of EBS licensees, applicants and others interested in EBS. CTN is an association of Roman Catholic archdioceses and dioceses that use EBS spectrum to serve many of the largest parochial school systems in the United States. Both organizations have long been active participants in WT Docket No. 03-66 and other proceedings affecting EBS.

Choice is a wireless video and broadband service provider in the U.S. Virgin Islands with licenses for 13 BRS channels and four commercial EBS channels. The commercial EBS license was issued in 2005, under then-existing Section 27.1201(c)(1) of the Commission’s rules, which provided a special exception to EBS eligibility requirements by permitting commercial licensing of EBS in situations where at least eight other EBS channels remained available for licensing to qualified educational entities. The exception was revoked in July, 2006.²

¹ Public Notice of the acceptance for filing of the Choice application was released on August 20, 2008 (Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, Report No. 4308, released August 20, 2008).

² See Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, 71 Fed. Reg. 35,178, 35,190 (June 19, 2006).

Despite the fact that the Commission's 2005 grant of the commercial EBS license to Choice was explicitly predicated on eight EBS channels remaining available for educators,³ Choice nevertheless now seeks an STA to use those very same remaining eight EBS channels (channels C1-C4 and D1-D4) to "free up spectrum from its existing spectrum holdings to allow it to improve and expand its wireless broadband service."⁴ Choice states that its need for the channels is temporary ("expected to require no more than six to 12 months").⁵ However, Choice makes no commitment to stop using the channels after any specified period of time. Indeed, Choice's application strongly suggests a long term need for the channels.⁶

Choice's application should be denied. Contrary to Choice's certifications in its application, Choice is *not* eligible to be licensed on EBS spectrum.⁷ Section 27.1201(a) of the Commission's rules provides that EBS licenses are reserved for accredited institutions and governmental organizations engaged in the formal education of enrolled students and nonprofit educational organizations serving such institutions and governmental organizations. To NEBSA's and CTN's knowledge and belief, *Choice is a commercial entity seeking an authorization for reserved educational spectrum for which it is not qualified, and for which no commercial licensing exception exists.*

The fact that Choice has requested temporary, rather than permanent, authority does not justify grant of the requested STA. STAs are intended to address emergency situations where facilities or spectrum needs to be used temporarily pending Commission action on a permanent authorization. STAs are *not* intended as a means of bypassing the

³ See *Choice Communications, LLC, Memorandum Opinion and Order* in File No. 0002104447, DA 05-1722 (WTB released June 22, 2005), at ¶ 5 (in order for commercial operators to take advantage of [EBS] frequencies, at least 8 [EBS] channels must remain available in the community).

⁴ Request for Special Temporary Authorization, Public Version, Amended Attachment 1 at 1.

⁵ *Id.*

⁶ See, e.g., *Id.* at 7 ("Consumer demand for higher bandwidth is continually growing. Choice's wireless broadband service currently offers an average download speed of 256 kbps. Choice anticipates, however, that it will need to increase the average download speed to 512 kbps in order to satisfy customer demand for higher bandwidth. Additional spectrum will ensure that Choice can deploy an effective near-line-of-sight, wireless broadband system that will support rapid customer additions and provide each customer with always-on, high-speed Internet regardless of system loading.").

⁷ Choice certified on page 4 of its application that "it has reviewed the appropriate Commission rules defining eligibility to hold the requested license(s), and *is eligible to hold the requested license(s).*" [Emphasis added]. Unless Choice is an accredited institution or governmental organization engaged in the formal education of enrolled students, or a nonprofit educational organization serving such institutions and governmental organizations, this certification is false.

Commission's basic eligibility requirements.⁸ Choice is not eligible for a permanent EBS license, and it is not eligible for an STA.⁹

The channels at issue are unlicensed because there has been no opportunity for educators to apply for new EBS channels for nearly 13 years.¹⁰ Earlier this year the Commission initiated a rulemaking to license such spectrum (so called "white space") in WT Docket No. 03-66. Comments in that rulemaking are due on September 22, 2008 and reply comments are due on October 22, 2008. Rather than authorize an unqualified commercial entity to use these channels, the Commission should proceed to resolve the issues raised in WT Docket No. 03-66 so that Choice has the opportunity to partner with a qualified educational entity to accomplish its goals.

If, notwithstanding these concerns, the Commission decides to grant the requested STA, the STA should be for a maximum term of 6 months with no more than one renewal term of 6 months, after which Choice should be required to cease use of the channels. The Commission should also ensure that the rights of prospective EBS licensees are fully protected in the ongoing rulemaking to license EBS white space. Specifically, the Commission should make clear that the white space licensing process in the USVI will not be delayed or compromised in any respect, and Choice will not, as a result of the STA, gain any interest whatever in the ultimate EBS authorization issued for these channels.

⁸ See, e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Re: Request for Special Temporary Authority NTSC Station KTBU(TV), Conroe, TX, 22 FCC Rcd 15068 (Rel. August 7, 2007) ("STA is the appropriate mechanism by which temporary relief is afforded in cases of unforeseen emergencies affecting a station's authorized facilities. As such, STA is generally restricted to the station's existing service area. In the instant request, you propose to construct essentially a new broadcast station with a new and increased service area for which you could not obtain permanent authority. Under these circumstances, it is inappropriate to effectuate such a change pursuant to STA.").

⁹ Choice cites two cases where STAs for television and multiple address system channels were granted during freezes preventing the filing of applications for regular licenses. However, in both cases cited, the parties requesting the STAs appear to have been fully qualified to hold regular licenses once the freeze was lifted. Choice also claims to hold STAs (or at least expired STAs with extension requests oddly pending for nearly three years) for the use of the B group in St. Thomas and the G group in St. Croix. NEBSA and CTN have been unable to confirm the existence of, or circumstances surrounding those STAs.

¹⁰ The last opportunity to file for EBS channels was in October 1995. At the time, V.I. Christian Ministries filed an application for C1-C4 (File No. 19951020IF), which was denied in 1997 for reasons now not specified on the Commission's historic EBS/BRS database. Shekinah Network, which now holds licenses for the B and G groups and leases excess capacity to Choice, also filed an application for D1-D4 (File No. 19951020IR), which was dismissed in 1996, again for reasons not specified in the Commission's database.

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Respectfully submitted,

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cc: Attached Service List

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing opposition by the National EBS Association and the Catholic Television Network have been served by U.S. first class mail, postage prepaid, or by email (as noted) this 15th day of September, 2008, on the following:

Cheryl A. Tritt
Morrison Foerster
2000 Pennsylvania Avenue, NW
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Blaise Scinto (via email)
Acting Chief, Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission

John Schauble (via email)
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission

//Nadine Curtis

Exhibit B

**NATIONAL EBS ASSOCIATION
AND
CATHOLIC TELEVISION NETWORK**

October 10, 2008

VIA ULS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: File No. 0003487551
Application of Choice Communications, L.L.C. for Special Temporary
Authorization for EBS Channels C1-C4 and D1-D4 at Charlotte Amalie, U.S.
Virgin Islands

Dear Ms. Dortch:

The National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”) have reached an accommodation with Choice Communications, L.L.C. (“Choice”) with respect to the above-referenced application by Choice for Special Temporary Authorization (“STA”) to operate a commercial wireless system on Educational Broadband Service (“EBS”) channels C1-C4 and D1-D4 at Charlotte Amalie, U.S. Virgin Islands.

Given the unique circumstances presented by the Choice request, NEBSA and CTN do not oppose the grant of an STA as long as (1) the Commission limits the initial STA term to six months with no more than one renewal term of six months, after which Choice will be required to cease all use of the channels, (2) the grant of the STA does not delay, compromise, or otherwise prejudice the outcome of the licensing of EBS white space, and (3) Choice will not, as a result of the STA, gain any interest in the ultimate EBS authorization issued for these channels.

Federal Communications Commission
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing opposition by the National EBS Association and the Catholic Television Network have been served by U.S. first class mail, postage prepaid, or by email (as noted) this 10th day of September, 2008, on the following:

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