



The Future of EBS

The FCC Rulemaking Explained
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NORTHERN MICHIGAN UNIVERSITY

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Presented By



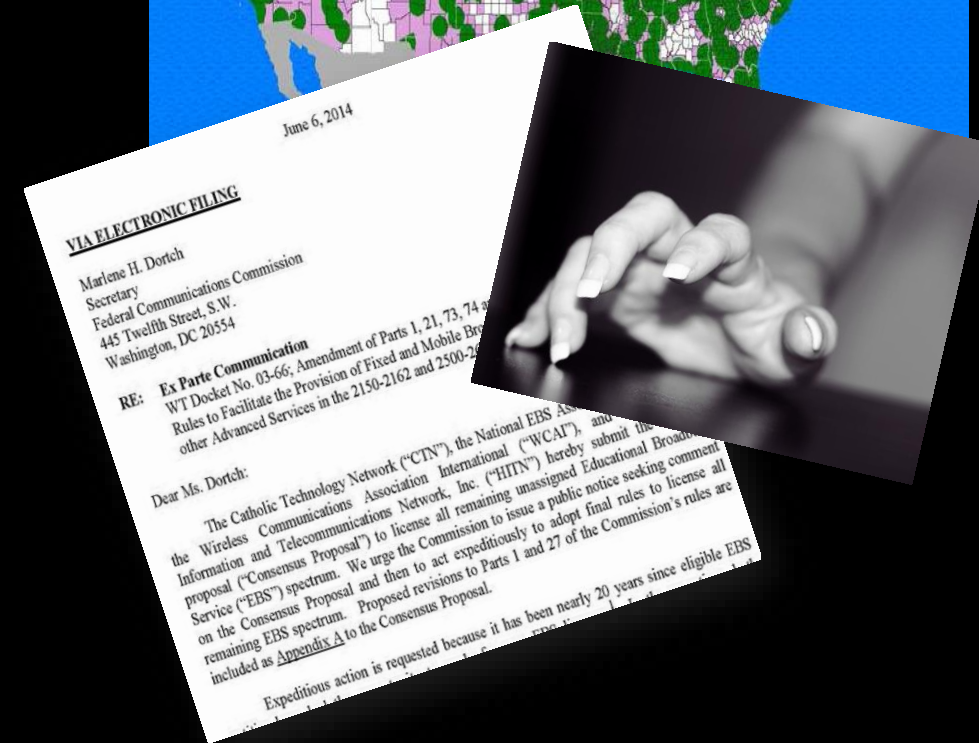
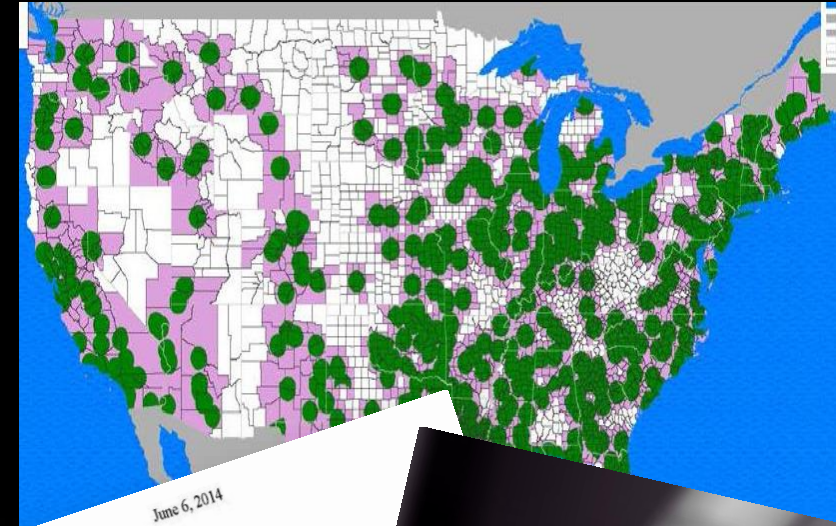
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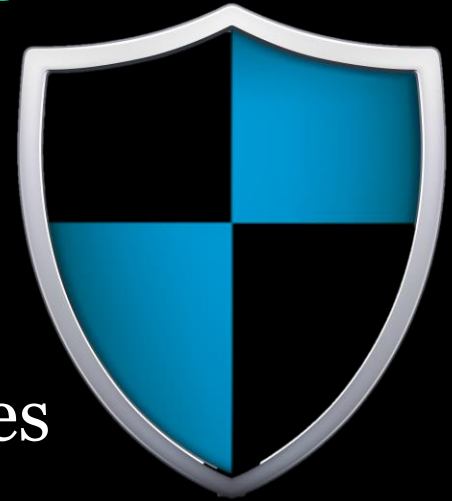
Background - History

- Long needed mechanism for licensing EBS “white space” (last opportunity to apply for new licenses was 1995)
- White space licensing raised difficult/complex issues
- Prior FCC White Space Rulemaking in 2008 – no resolution
- Consensus Proposal in 2014 – no action
- What finally drove FCC to move forward now? **5G**



What the EBS Community Sought

- Protection of existing licenses and leases
- Limited scope – white space licensing
- Rationalization of existing GSAs to county boundaries
- County-based process for new licenses
- Opportunity for educators to apply without auctions
- Little or no change in other areas – eligibility, educational use, renewal standards, leasing rules etc.



FCC Had a Different View

- Existing EBS regulatory model is outdated (“command and control”)
- Deregulation of EBS and assignment of white space by auction will result in spectrum going to best and highest use
- All EBS regulatory elements are in play
- FCC informed by many interests – incumbent licensees, prospective EBS applicants, Sprint, Sprint competitors, small operators, public interest groups, Tribal groups etc.
- In the process, one Commissioner became concerned about regulatory compliance by some existing EBS licensees



Result?

- At the 25,000 foot level:
 - Significant deregulatory change in direction for EBS
 - Future licensing by auction to highest bidder
 - Abandonment of educational ties to spectrum
 - Free market in existing EBS licenses
 - But, avoids disruption to existing licenses and leases
- Summary of specific decisions follows – but note: this presentation provides general overview, and NOT legal advice



No Disruption

- ❖ The FCC does not intend to disrupt incumbent licenses, operations, or leases.
 - We clarify that nothing in our decisions is intended to affect or change the terms of any private contractual arrangement or any provisions in existing leases. (§§ 17, 30, 77, and 82)
 - Nothing in this *Order* requires incumbent licensees to abandon their current educational use or to change how they use their spectrum. (§ 76)



Commercial Use Permitted

- ❖ EBS eligibility requirements eliminated.
 - Incumbent and new EBS licenses will be free of eligibility restrictions; EBS licensees may assign or transfer their licenses freely. (§ 15)
 - Any educator with a broadband connection can access a myriad of educational resources – a content model that does not require dedicated educational spectrum licensed to educational institutions. (§ 16)
 - Most EBS licensees lease their spectrum to commercial operators and meet their educational requirements providing services that do not require dedicated EBS spectrum. (§ 24 note 64)



EBS Licensee Choice



- ❖ Granting incumbent licensees additional flexibility to transfer or assign their licenses will not affect existing leases because:
 - (1) the decision about whether to transfer or assign a license remains with the EBS licensee, and
 - (2) our actions do not affect the validity of existing leases and other contractual arrangements. (§ 17)
- ❖ Incumbent EBS licensees that wish to retain their licenses and continue participating in public-private partnerships may do so; incumbent licensees that wish to transfer or assign their licenses will now have greater ability to do so. (§ 17)

No Educational Use Requirements

- ❖ EBS educational use requirements will be optional.
 - Licensees holding licenses in the 2.5 GHz band, whether obtained before or after adoption of this *Order*, will not be required to use those licenses to fulfill an educational mission, although they are still permitted to do so. (§ 26)



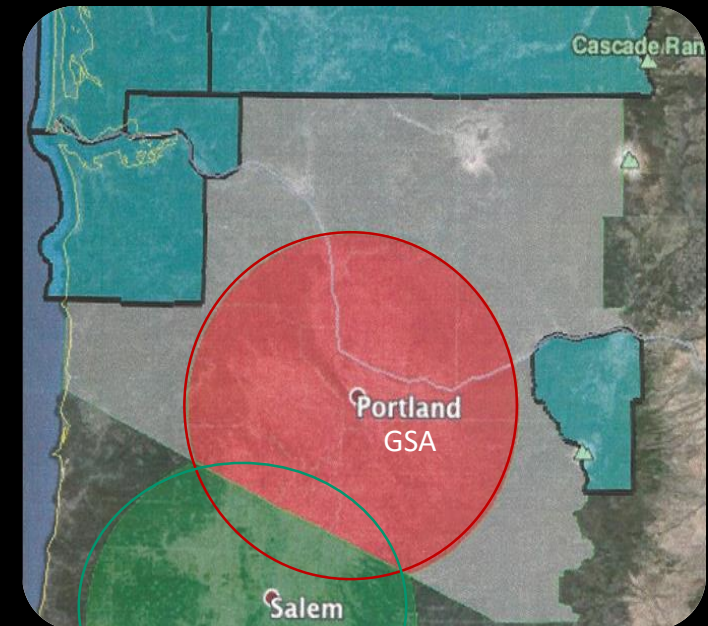
Lease Term Limits Lifted

- ❖ Going forward, EBS lease term limits will no longer be capped at 30 years.
 - We see no value in maintaining special lease restrictions that only apply to EBS. (§ 32)
 - We emphasize that nothing in this *Order* is intended to invalidate existing lease provisions. Leases are a form of contract, and the parties retain the ability to exercise their rights under state law. (§ 34)



Licensed Service Areas Unchanged

- ❖ Existing GSAs remain unchanged.
 - To ensure that the fallow spectrum in this band is made available for use quickly, we have decided to leave existing boundaries for incumbent 2.5 GHz licenses intact. (¶ 36)
- ❖ FCC concerns with proposed GSA expansion include:
 - Complex, time-consuming, and potentially confusing process. (¶ 36 and 43)
 - Would not result in regular, mappable license areas. Current problems would persist. (¶ 39)
 - No guarantee that existing licensees would use expanded areas. (¶ 38)



No General Priority Filing Window

- ❖ No priority filing window for new EBS licenses – except Tribal Nations.
- ❖ **Reasons**
 - FCC would likely receive many competing applications.
 - With competing applications, FCC *must* use auctions to resolve conflicts.
 - Various workarounds that have been proposed, such as use of a “first-come first served” filing system, are inconsistent with the legal requirement to use competitive bidding.
 - Efforts to implement proposed workarounds would take considerable time and would cause delay. (¶¶ 66-69)



Tribal Filing Window

- ❖ Priority filing window for Tribal Nations only.
- ❖ **Reasons:**
 - Unique status – Significant obstacles to offering service on Tribal lands, no previous access to EBS spectrum. (§ 72)
 - Less likely to trigger auction – Only 573 Tribes; most Tribal lands have single Tribe. (§§ 49 and 73)
- ❖ Tribal licenses must protect incumbent GSAs. Tribes have opportunity to obtain all available EBS spectrum on rural Tribal Lands. (§§ 46-47)

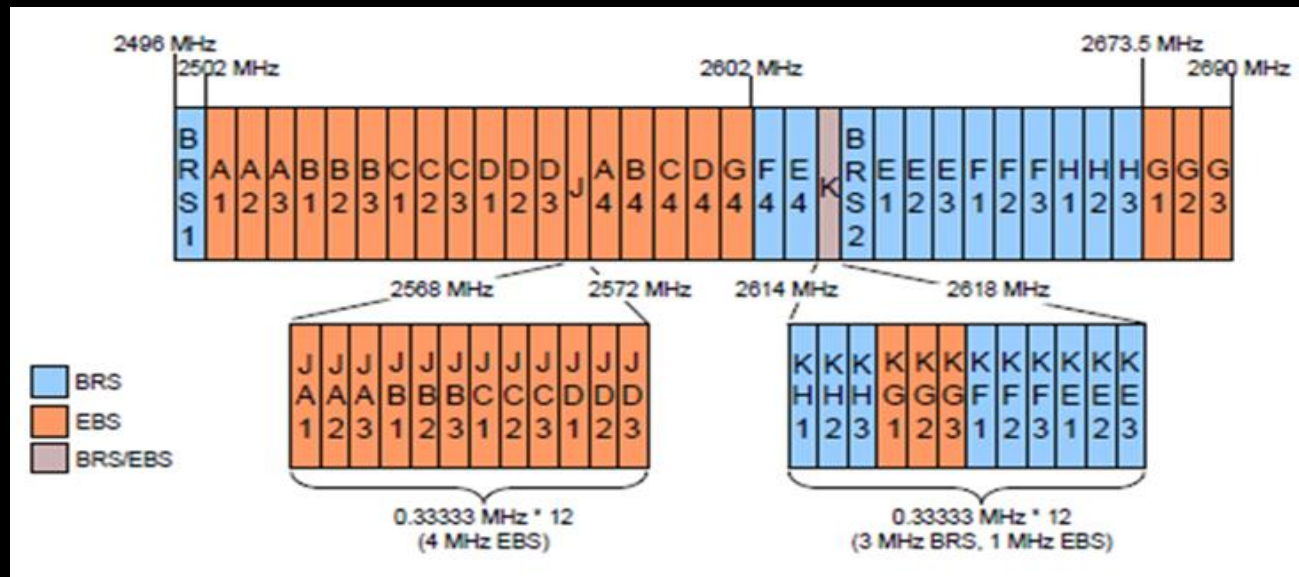


Incentive Auction Rejected

- ❖ AT&T's proposal to terminate EBS leases to facilitate incentive auction would create an undue deterrent to spectrum leasing and create uncertainty. (¶ 79)
- ❖ Additional FCC concerns with incentive auction:
 - Most licensed EBS spectrum is already leased.
 - Little interest from incumbent EBS licensees and potential bidders.
 - Many EBS licensees do not have authorization to bid under state law.
 - Process is complicated, costly, and time-consuming.
 - Process could be disruptive for incumbent EBS licensees.

Overlay Auction Adopted

- ❖ After the Tribal window, all remaining EBS spectrum will be auctioned on a county basis. (§§ 75 and 77)
 - Three overlay licenses to be auctioned (§ 96):
 - A1-A3, B1-B3, C1-C3 (49.5 MHz)
 - D1-D3, J, and A4-G4 (50.5 MHz)
 - G1-G3 and associated K channels (17.5 MHz)



Bidding Credits

- ❖ Bidding credits available to qualified entities (¶¶ 89-92):
 - 15% discount to entities with annual gross revenue not exceeding \$55 million.
 - 25% discount to entities with annual gross revenue not exceeding \$20 million.
 - 15% discount for rural and Tribal lands.



Overlay Auction – Clarifications

- ❖ Only counties with some EBS white space available will be auctioned; fully encumbered counties will not be auctioned.
- ❖ Overlay auction winners must protect previously licensed EBS GSAs.
- ❖ If an incumbent EBS license is cancelled or terminated, the license defaults to the overlay auction winner. (§ 77 note 211)

EBS Buyouts Anticipated

- ❖ The FCC anticipates buyouts:
 - “An overlay auction licensee may clear its geographic area by purchasing the incumbent licenses, but it does not have the exclusive right to negotiate with the incumbent licensee for its spectrum rights or to purchase an incumbent license in the geographic area in which it has the overlay rights. An auction of overlay licenses would make the unassigned EBS spectrum available expeditiously to potential bidders and would provide a mechanism for those bidders to acquire additional spectrum usage rights within their geographic area **when and if an incumbent licensee desires to make its spectrum available.**” (¶ 77)



New Performance Requirements

- ❖ New EBS licenses (*i.e.*, those issued to Tribes and through competitive bidding) are subject to stringent performance requirements. (§§ 101, 106 and 108)
 - EXAMPLE: 80% population coverage for mobile or point-to-multipoint service within 8 years.
 - Interim goal of 40% population coverage within 4 years.
 - Failure to reach interim goal results in acceleration of final benchmark deadline to 6 years.
 - Tighter deadlines for Tribal Nations to deter speculation, application mills, and encourage rapid deployment in rural areas.

Incumbent EBS Renewal Requirements

- ❖ From now until effective date of *Order*, no changes anticipated in EBS license renewal process.
- ❖ On the effective date of the *Order*, educational use rules will be eliminated. Not clear whether or how the existing license renewal application may change. However, after the effective date of the *Order*, a new **discontinuance of service** rule will take effect.
 - If service/operations discontinued for 180 consecutive days, must notify FCC and request license cancellation. Otherwise, license automatically terminates. *47 CFR Section 1.953*

2023 – WRS Framework Applies

- ❖ Beginning on January 1, 2023, the same license framework that applies to other wireless services will apply to incumbent EBS licensees. This means that when a renewal application is filed, an incumbent EBS licensee must certify to:
 - Continuous compliance with applicable usage/coverage requirements.
 - No permanent discontinuance of service.
 - No regulatory compliance issues.
- ❖ Otherwise, detailed renewal showing required.



Possible Future Changes

- ❖ “In evaluating existing licensees under these new renewal standards, however, we will apply new WRS build-out standards **if the Commission promulgates them**. Without prejudging the outcome of that open proceeding, we seek to harmonize the 2.5 GHz band with other bands that support commercial wireless services, recognizing that this *Order* transitions the band to more flexible use. For clarity, we emphasize that the old, substantial service build-out standard contained in section 27.14(o) of the Commission’s rules will apply to existing EBS license renewals, **unless the Commission alters the WRS build-out standards upon renewal**. We further clarify that, for purposes of meeting the old renewal standard, the educational use safe harbor contained in section 27.14(o)(2) is available only to licensees that meet the old EBS eligibility standard, since that safe harbor was based on service to accredited educational institutions.” (§ 112 *emphasis added*)

What Happens Next?

- Rules will become effective 6 months after Federal Register publication
 - FR Publication – next few weeks?
 - So, effective date some time in 1Q 2020? – no change in rules until then
- FR Publication also triggers reconsideration process
 - Petitions for Reconsideration due 30 days following publication
 - So, late August or early September?
 - Some petitions are probably inevitable – will create uncertainty
- FCC Chairman stated intention to hold auctions “next year”
- Auctions would be preceded by Tribal priority filing window.

Questions?

