



April 11, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: Notice of *Ex Parte*
Transforming the 2.5 GHz Band, WT Docket No. 18-120**

Dear Madam Secretary:

The Schools, Health & Libraries Broadband (SHLB) Coalition files this initial response to the paper submitted into the record of this proceeding by Fred Campbell on behalf of Tech Knowledge on March 27, 2019.¹ The paper attempts to explain the economic benefits of auctioning the licenses for Educational Broadband Service (EBS). Unfortunately, rather than making a fact-based analysis of the data and proposals in the record, the paper takes a conclusory and one-dimensional approach that ignores the economic benefits that would result if licensing priority is given to Tribal Nations and educational institutions, as proposed by the Notice of Proposed Rulemaking (NPRM) in this proceeding. We urge the Federal Communications Commission to reject the paper's recommendations to abandon the public interest and auction these licenses. Instead, the Commission should move forward with the proposal to establish priority filing windows for Tribal Nations and educational institutions and preserve these important public interest opportunities for the EBS spectrum.

The Tech Knowledge White Paper begins and ends with a focus on economic efficiency. While this is certainly a laudable goal, it is not the only goal that the Commission should pursue and is not the statutory standard that governs the FCC's decision-making. Rather, the FCC is charged with awarding licenses according to a much broader public interest standard that includes considerations of equity, localism, diversity, competition, minority ownership, and other factors in addition to economic efficiency. These other factors are particularly relevant to EBS

¹ "Roadmap for a Voluntary Incentive Auction of Educational Spectrum in the 2.5 GHz Band," Attachment to Letter from Fred Campbell, Director, Tech Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 (filed March 27, 2019) ("Tech Knowledge White Paper").

because of the educational legacy of the band and the long history of the 2.5 GHz band licensing regime that was intended to complement traditional commercial offerings, first for broadcast and today for broadband.

Furthermore, the paper makes incorrect and inflammatory allegations to demean existing licensees without providing evidence to support them. For instance, he claims that:

The implicit subsidy in the EBS licensing system is economically inefficient, largely duplicative of the agency's E-rate program for subsidizing educational broadband connections, and conducive to waste, fraud, and abuse . . . EBS licensees have lower incentives and less expertise in managing valuable spectrum resources than commercial wireless operators . . .²

These spurious allegations, which are stated cavalierly as if they are fact but which are easily refuted based on evidence submitted in the record, demonstrate the paper's bias right from the start. In fact, EBS licenses are not duplicative of the E-rate program because the E-rate program benefits K-12 schools and libraries, while many EBS licensees are institutions of higher education that do not participate in E-rate. In addition, E-rate funds focus on supporting broadband connectivity for schools and libraries and do not directly address the homework gap faced by 12 million students across the country.³ By contrast, the record demonstrates that EBS spectrum is being used *today* to help fill this gap, connecting students through Wi-Fi on school buses⁴ and hot spot lending programs.⁵ The record also demonstrates that, where EBS lays fallow, educators and Tribal Nations are eager for the opportunity to utilize EBS to provide similar programs to students in their communities.⁶

² Tech Knowledge White Paper at 2.

³ Comm'r Jessica Rosenworcel, Remarks at the U.S. Conference of Catholic Bishops at 4 (Oct. 12, 2017), <https://docs.fcc.gov/public/attachments/DOC-347198A1.pdf> ("According to the Pew Research Center, there are 5 million households in this country with school-aged children that lack Internet service at home. According to the Senate Joint Economic Committee 12 million children live in homes that lack a broadband connection."); John B. Horrigan, *The Numbers Behind the Broadband 'Homework Gap'*, Pew Research Ctr. (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>; Senator Martin Heinrich, U.S. Congress Joint Economic Committee, *America's Digital Divide 4* (2017), available at https://www.jec.senate.gov/public/_cache/files/ff7b3d0b-bc00-4498-9f9d-3e56ef95088f/the-digital-divide-.pdf.

⁴ See e.g., Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 16, WT Docket No. 18-120 (filed Aug. 8, 2018) ("NACEPF and Mobile Beacon Comments"); Comments of North Carolina Department of Information Technology, Broadband Infrastructure Office at 4, WT Docket No. 18-120 (filed Aug. 8, 2018).

⁵ Comments of TechSoup Global at 2, WT Docket No. 18-120 (filed Aug. 8, 2018); Comments of St. Charles Borromeo Catholic School, WT Docket No. 18-120 (filed Aug. 29, 2018); Comments of Digital Wish at 1-3, WT Docket No. 18-120 (filed Aug. 8, 2018).

⁶ Comments of Nebraska Department of Education (NDE), Nebraska Educational Television (NET), and the State of Nebraska Office of the Chief Information Officer (OCIO) at 5-6, 7-8, WT Docket No. 18-120 (filed Aug. 8, 2018); Letter from John Bezdek, Shareholder, Water and Power Law Group, to Marlene H. Dortch, Secretary, FCC at 1-2, WT Docket No. 18-120 (filed March 29, 2019).

It is astounding and unprofessional that the paper would toss around the catch-phrase of “waste, fraud, and abuse” to describe EBS licensees with no evidence to back up this claim. The author may believe that EBS licensees have lower incentives and less expertise to deploy broadband service, but this is an opinion, not an analysis, and again ignores the record of this proceeding. There is no evidence that he has tried to speak to any of the hundreds of educational organizations that have deployed and are deploying EBS today often with more success than the traditional wireless operators.⁷

The paper’s only substantive argument is that the EBS leasing “scheme” (an unnecessarily pejorative term to describe a practice that has been endorsed and encouraged by the Commission for several decades) is economically inefficient, but even this argument is easily debunked. The paper assumes that the licenses should be held by the large commercial operators and that allowing schools and Tribal Nations to own the licenses would simply cause inefficient transaction costs before the licenses are claimed by their rightful owners – the commercial carriers. This circular reasoning does not even attempt to analyze the economic benefits that would result if the licenses are actually held by Tribal Nations and educational institutions. The article asserts that “an incentive auction would maximize the educational value of EBS spectrum”⁸ but never actually explains how education would benefit. In fact, the paper does not even address the key issue the Commission seeks to solve – closing the digital divide.

There are a number of other inconsistencies in the paper that should be mentioned briefly to demonstrate its lack of merit:

- It criticizes the existing licensing regime for rewarding universities with large endowments, and then praises auctions because they would yield more revenue for those same institutions.⁹
- It concludes the existing leasing regime is uneconomic despite admitting that the FCC has not gathered evidence about the existing leases. The paper rests its entire argument on a single lease, without regard to the hundreds of other leases in the marketplace. The paper ignores the robust record of EBS success stories in the rulemaking docket.
- It encourages the Commission to preempt contracts to allow EBS licensees to sell their licenses. The Commission has no precedent of breaking private contracts, and doing so would not only jeopardize educational benefits being delivered today through these

⁷ Presentation of Mitchell Koep, “Window of Opportunity: How EBS Spectrum Can Close the Digital Divide,” *Briefing on the Educational Broadband Service Spectrum* (Mar. 7, 2019), available at http://www.shlb.org/uploads/Events/2019%20EBS%20Hill%20Briefing/EBS_HillBriefing_SlideDeck.pdf.

⁸ Tech Knowledge White Paper at 11.

⁹ Tech Knowledge White Paper at 3.

public-private partnerships, it would also undermine existing commercial buildouts and strand investment.

- It bases its analysis on current EBS policies, but SHLB and others have urged the FCC to modernize many of these policies.¹⁰
- It does not address the legal authority to reserve a portion of incentive auction revenue to fund for the Homework Gap. If the FCC follows the recommendation of this paper, all the funding generated from the auction would go either to the existing licensees or to the federal government with no educational benefit.

In sum, the paper offers a one-dimensional, conclusory discussion that ignores the record and does not factor in the economic or social benefits that would result from awarding licenses to schools and Tribal Nations. As a result, it rests on beliefs that are not grounded in EBS, but a broader world-view that would equally hold that public broadcasting is inefficient and should be commercialized because the licenses are not held by commercial broadcasters. That well may be the author's viewpoint, but it should not be credited as an economic study. Rather, this is an opinion piece offered by an attorney, not an economist. The paper does not analyze evidence and data to come to a conclusion. Its opinion in favor of auctions is pre-determined at the outset.

For these reasons, the SHLB Coalition urges the Commission to give this paper little consideration and, instead, to base its decisions about what EBS policies to pursue on the record of factual evidence in this proceeding.

Sincerely,



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¹⁰ Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition at 4-6, WT Docket No. 18-120 (filed Aug. 8, 2018); Comments of Voqal at 15-16, WT Docket No. 18-120 (filed Aug. 8, 2018); NACEPF and Mobile Beacon Comments at 14-34.