



December 2, 2020

**Via ECFS**

The Honorable Ajit Pai  
Chairman, Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

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

Dear Chairman Pai,

The COVID-19 pandemic has exposed—like never before—the need to consider any and all available solutions to address the homework gap and our country’s educational connectivity crisis, including educational access to unassigned spectrum. For the reasons set out below, the undersigned respectfully request that the Commission defer further action on the controversial matter of the future of the 2.5 GHz Educational Broadband Service (EBS) band. Doing so is consistent with established Commission practice<sup>1</sup> and respects the recent directive from Congressional leaders to “immediately stop work on all partisan, controversial items under consideration” pending the transition to a new administration.<sup>2</sup>

The Commission’s June 2019 EBS Order was both partisan and controversial.<sup>3</sup> It was adopted in a party-line, 3-2 vote, and several parties filed petitions for reconsideration afterwards. We appreciate that the Commission created a Rural Tribal Priority Window for tribal nations to acquire EBS spectrum and applaud the success of that window to date.<sup>4</sup> However, we were disappointed the Commission chose to ignore rural educators and anchor institutions that face similar broadband connectivity challenges in their communities. To address these concerns, a group of Educational Petitioners respectfully requested the Commission reconsider aspects of its decision.<sup>5</sup>

We understand that a draft order on that Reconsideration Petition is currently pending before the Commission.<sup>6</sup> **The undersigned educational and public interest groups respectfully request that**

---

<sup>1</sup> Press Release, Statement of FCC Commissioner Ajit Pai on Congress’s Call to Stop Controversial Votes During the Transition (rel. Nov. 15, 2016).

<sup>2</sup> Letter from Chairman Frank Pallone, Jr., House Committee on Energy and Commerce, and Chairman Mike Doyle, House Subcommittee on Communications and Technology, to Chairman Ajit Pai (Nov. 10, 2020), <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/FCC%20Letter%20re%20stop%20work%20request.pdf>.

<sup>3</sup> *Transforming the 2.5 GHz Band*, Report & Order, 34 FCC Rcd. 5446 (2019) (“EBS Order”).

<sup>4</sup> Press Release, FCC Grants First Licenses in 2.5 GHz Rural Tribal Priority Window (rel. Oct. 23, 2020).

<sup>5</sup> Petition for Reconsideration and Clarification of the Schools, Health & Libraries Broadband Coalition, Consortium for School Networking, State Educational Technology Directors Association, American Library Association, National Digital Inclusion Alliance, Nebraska Department of Education, Utah Education and Telehealth Network, Council of Chief State School Officers, A Better Wireless, and Access Humboldt (collectively, “Educational Petitioners”), WT Docket No. 18-120 (filed Nov. 25, 2019).

<sup>6</sup> Federal Communications Commission, *Items on Circulation*, <https://www.fcc.gov/items-on-circulation> (last visited Nov. 23, 2020).

**the Commission refrain from any further action on the Reconsideration Petition or implementing the EBS Order until a new Commission is in place.** There are multiple reasons for this request.

**First, the EBS rulemaking was controversial.** Two recent filings in the EBS docket (WT 18-120) urge the Commission to resolve the pending reconsideration petitions and move forward to implement the EBS Order, claiming that “an auction of the 2.5 GHz band is neither partisan nor controversial.”<sup>7</sup> That is far from the truth. Adopted by a 3-2 vote along party lines, the Commissioners were plainly divided on the future of the 2.5 GHz band. Upon the Order’s adoption, Commissioner Rosenworcel’s statement described the majority decision as “turn[ing] its back on the schools and educational institutions that have made the 2.5 GHz band their home since 1962.”<sup>8</sup> Commissioner Starks’ statement described it as a “missed opportunity[,] a regrettable outcome, and one that could have been avoided.”<sup>9</sup> While the Commissioners may have agreed on some aspects of the EBS Order, such as the Tribal Priority Window, such strong statements belie the claim that the future of the band was “neither partisan nor controversial.”

Nor was the controversial nature of the proceeding confined to the Commission. Throughout the rulemaking and licensing process, moreover, dozens of Members of Congress in bipartisan fashion<sup>10</sup> wrote to the Commission asking for an opportunity for rural tribal nations and educational entities to acquire 2.5 GHz spectrum licenses. As Senator Fischer’s letter explained, the Commission “should include making new EBS licenses available to educational entities that could put them to work as the Commission originally had envisioned.”<sup>11</sup> In addition, the United States Department of Education also asked the Commission to license EBS spectrum to educational entities on a priority basis.<sup>12</sup> Given such strong and divergent views on the future of the EBS band, neither the Order nor the pending Reconsideration Petition can fairly be characterized as non-controversial.

**Second, Congress is still actively considering this issue.** On November 17, 2020, the Senate Indian Affairs Committee approved legislation that would extend the Rural Tribal Priority Window for an

---

<sup>7</sup> Letter from Steve B. Sharkey, Vice President, T-Mobile USA, Inc., to Marlene H. Dortch, WT Docket No. 18-120 (filed Nov. 17, 2020). *See also* Letter from Steve B. Sharkey, Vice President, T-Mobile USA, Inc., to Marlene H. Dortch, WT Docket No. 18-120 (filed Nov. 20, 2020). That the 2016 letter from Congressional leaders encouraged continued work on the broadcast incentive auction during the administrative transition has no relevance here for multiple reasons. The broadcast incentive auction was specifically authorized by Congress and was already well underway by the date of the 2016 letter. Unlike the 2016 letter which specifically and expressly directed the Commission to continue work on the incentive auction, the current letter makes no mention of the 2.5 GHz auction, which is still in the earliest planning stages. Thus, refraining from action on the 2.5 GHz band—not ploughing ahead—is consistent with Congress’s direction.

<sup>8</sup> EBS Order at 5525.

<sup>9</sup> *Id.* at 5528.

<sup>10</sup> The list of Members of Congress weighing in includes Senators King, Collins, Peters, Sinema, Fischer, and Sasse, and Reps. Murray, Johnson, Haaland, Gallego, Grivjalva, Bacon, Smith, Khanna, Clyburn, Meng, Cox, and Axne. *See, e.g.*, Letter from Reps. Grace Meng, James Clyburn, TJ Cox, Ro Khanna, and Cindy Axne to Chairman Ajit Pai (July 29, 2019); Letter from Reps. Deb Haaland, Ruben Gallego, and Raul Grijalva to Chairman Ajit Pai; Letter from Rep. Bill Johnson to Chairman Ajit Pai (July 8, 2019); Letter from Sen. Kyrsten Sinema to Chairman Ajit Pai (June 10, 2019). Other letters are available at <https://www.fcc.gov/chairman-pais-letters-congress>.

<sup>11</sup> Letter from Sen. Deb Fischer, Sen. Ben Sasse, Rep. Don Bacon, and Rep. Adrian Smith to Chairman Ajit Pai (June 18, 2019).

<sup>12</sup> Letter from Jim Blew, Assistant Secretary, U.S. Department of Education, to Marlene H. Dortch, WT Docket No. 18-120 (filed June 7, 2019).

additional 180 days.<sup>13</sup> The House has already passed legislation seeking an extension.<sup>14</sup> Such new legislation would provide specific direction to Congress on the allocation of the unassigned spectrum remaining in the 2.5 GHz band. The Commission should not rush to implement the Order in ways that would foreclose such Congressional deliberations and potentially thwart specific direction to extend the windows for Tribal spectrum access. Rather, the Commission should afford Congress the opportunity to legislate on this issue, which remains under active consideration.

**Finally—and perhaps most importantly—actions during the COVID-19 pandemic have demonstrated that access to EBS and other spectrum can be a critical part of the solution to our country’s educational connectivity crisis.** The world has changed since the Commission’s June 2019 EBS Order. With huge swaths of the country forced to remote learning, the cruelty of the homework gap cannot be denied. At the same time, new and abundant evidence demonstrates that anchor institutions can play a critical role in building wireless networks to help solve it. A new report called *The Online Learning Equity Gap: Innovative Solutions to Connect All Students at Home*<sup>15</sup> describes several examples of self-built private LTE networks and public-private partnerships between schools and local providers that have quickly connected students during the pandemic. The report highlights EBS as an important tool to help connect students and families. The Commission has even acknowledged this as a solution by granting a handful of EBS Special Temporary Authorizations since March.<sup>16</sup> These private networks demonstrate that anchor institutions and their partners have the technical skill to quickly build networks if only they have spectrum like EBS as a tool. In addition, the Commission has repeatedly expressed optimism<sup>17</sup> for technologies like virtualized Open Radio Access Networks (ORAN) that make deployment and operations much more cost-effective and easy to implement. All this evidence warrants deeper consideration by the Commission.

We share the Commission’s goal of putting spectrum—an essential public resource—to its best and highest use. But we also believe the FCC should fully consider the above developments and the will of the American people in the recent election rather than rushing to cement decisions on the 2.5 GHz band before the transition to a new administration is complete.

Sincerely,



John Windhausen, Jr.  
Executive Director

---

<sup>13</sup> S. 3264, 116th Cong. (as approved by voice vote by S. Comm. on Indian Affairs, Nov. 18, 2020).

<sup>14</sup> H.R. 2, 116th Cong. § 31701 (as passed by House, July 1, 2020).

<sup>15</sup> Michael Calabrese & Amir Nasr, *The Online Learning Equity Gap: Innovative Solutions to Connect All Students at Home* (New America, Nov. 2020), <https://www.newamerica.org/oti/reports/online-learning-equity-gap/executive-summary>.

<sup>16</sup> See, e.g., Press Release, FCC Boosts Wireless Broadband for Rural Kentucky with Temporary Spectrum Access for Harlan County (rel. June 2, 2020); E-mail from Elizabeth Fishel to Susan Mort et al. (June 2, 2020) (granting Harlan 2-Way Inc.’s request for emergency Special Temporary Authority (STA)); Press Release, FCC Grants the Navajo Nation Temporary Spectrum Access to Meet Increased Wireless Broadband Needs During COVID-19 Pandemic (rel. Apr. 17, 2020); E-mail from Elizabeth Fishel to Jim Dunstan et al. (Apr. 17, 2020) (granting the Navajo Nation’s request for emergency STA).

<sup>17</sup> Remarks of FCC Chairman Ajit Pai at the FCC Forum on 5G Open Radio Access Networks, (Sept. 14, 2020), <https://docs.fcc.gov/public/attachments/DOC-366866A1.pdf>.

Schools, Health & Libraries Broadband (SHLB) Coalition  
Washington, DC

Steven	Corbato	Executive Director	Link Oregon	Portland	OR
Robert	Stewart	Library Director	Asbury Park Library	Asbury Park	NJ
Karen	Richardson	Executive Director	Virginia Society for Technology in Education	Richmond	VA
Jacob	Bowser	Director of Technology	Castleberry Independent School District	River Oaks	TX
Keith	Krueger	President and CEO	CoSN, the Consortium for School Networking	Washington	DC
Sean Taketa	McLaughlin	Executive Director	Access Humboldt	Eureka	CA
Derek	Masseth	Executive Director	Sun Corridor Network	TUCSON	AZ
Don	Means	Director	Gigabit Libraries Network	Sausalito	CA
Joanne	Hovis	CEO	Coalition for Local Internet Choice	Washington	DC
Katherine	Messier	Executive Director	Mobile Beacon	Johnston	RI
Larra	Clark	Deputy Director, ALA Public Policy & Advocacy Office	American Library Association	Washington	DC
Christine	Fox	Interim Executive Director	SETDA	Glen Burnie	MD
Adrienne	Furniss	Executive Director	Benton Institute for Broadband & Society	Evanston	IL
Angela	Siefer	Executive Director	National Digital Inclusion Alliance	Columbus	MD

Cassie	Bair	Chief Business Development Executive	Mobile Citizen	Longmont	CO
Ray	Timothy	CEO/Executive Director	Utah Education and Telehealth Network	Salt Lake City	UT
Mitch	Koep	CEO	A Better Wireless	Henning	MN
Karen	Goff	Executive Secretary	West Virginia Library Commission	Charleston	WV
Coree	Kelly	Chief Information Officer	Southern Oregon Education Service District	Medford	OR
Matthew L.	Blomstedt, Ph.D	Commissioner of Education	Nebraska Department of Education	Lincoln	NE
Luis	Wong	Chief Technology Officer	Imperial County Office of Education	El Centro	CA
SuAnn	Witt	State E-rate Coordinator	Nebraska Dept of Education	Lincoln	NE

Cc: Commissioner Michael O'Rielly  
Cc: Commissioner Jessica Rosenworcel  
Cc: Commissioner Brendan Carr  
Cc: Commissioner Geoffrey Starks