



Federal Communications Commission
Washington, D.C. 20554

July 2, 2019

Brendan Carr
Commissioner

John Schwartz, President
Voqal USA
P.O. Box 6060
Boulder, CO 80306

Dear Mr. Schwartz:

At the FCC's July Open Meeting, we will consider an Order concerning Educational Broadcast Service (EBS) licenses in the 2.5 GHz band, including licenses held by Voqal. This swath of spectrum is the largest contiguous band below 3 GHz. Its propagation and throughput characteristics make it ideally suited for next-generation mobile broadband, including 5G.

Despite the band's promise, it has been underutilized. The spectrum is completely unused in a majority of the country. And where it is used, FCC rules have imposed ownership limits and restrictions on the types of services that can be provided.

The Order aims to eliminate some of these encumbrances. It does away with ownership restrictions and it authorizes auctioning the band's white spaces. These actions will transition the band to full commercial use, which will attract greater private sector investment and 5G service. They also have the potential to profit the incumbent holders of 2.5 GHz licenses, many of which received the licenses at no cost.

The Commission created EBS, and its predecessor Instructional Television Fixed Service (ITFS), for the benefit of students. Indeed, only entities that teach or provide educational material are qualified to be licensees. An EBS license is restricted to "an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations."¹

Central to the FCC's EBS licensing regime is a connection to the local community and neighborhood school. The Commission "recognize[d] a strong preference for local entities" as licensees, and it doubted whether out-of-town nonprofits needed EBS licenses to provide "quality instructional programming" for local schools.² Consequently, our regulations place special requirements on licensees that are not themselves schools and those that are not local.

¹ 47 C.F.R. § 27.1201(a).

² See *Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service*, MM Docket No. 83-523, Second Report and Order, 101 F.C.C. 2d 49, para. 19-20 (1985).

Licensees that are not themselves schools “must submit documentation from proposed [school] receive sites demonstrating that they will receive and use the applicant’s educational usage [The documentation] should be in letter form, written and signed by an administrator or authority who is responsible for the receive site’s curriculum planning [T]he letter should indicate that the data services will be used in furtherance of the institution’s educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage.”³

Licensees that are not based within the geographic area of their licenses “must demonstrate the establishment of a local program committee in each community where they apply. Letters submitted on behalf of a nonlocal entity must confirm that a member of the receive site’s staff will serve on the local program committee and demonstrate a recognition of the composition and power of the committee. The letter should show that the staff member will aid in the selection, scheduling and production of the programming received over the system.”⁴

A review of your organization’s publicly available material raises questions about your compliance with the Commission’s rules: whether you properly qualify to hold an EBS license, whether your use of EBS licenses and associated revenues comply with our regulations, and whether your corporate governance practices are consistent with applicable law.

To provide clarity to the Commission and to aid in enforcement efforts, by July 15, 2019, please provide answers to the following questions.

1. How do you comply with our detailed local participation requirements for nonlocal licensees, contained in 47 C.F.R. § 27.1201(a)(3) and (4)? To answer this question adequately, detail the complete list of accredited educational institutions you serve within each of your license areas, and provide copies of the administrator and local program committees’ letters for those institutions.
2. Our spectrum leasing rules in 47 C.F.R. § 27.1214 authorize spectrum leasing so long as a minimum of five percent of capacity is reserved for specified educational uses. How do you comply with that educational requirement? Provide detailed calculations of total license capacity and the portion used to comply.
3. In your latest annual report, you highlight a number of donations you have made to political and advocacy groups. Organizations by the same names as two of your grantees—Arizona WINS and WIN Minnesota—appear to expressly advocate for the election and defeat of political candidates.
 - a. How is the use of EBS license funding for each of these activities in furtherance of your required educational purpose and consistent with our license restrictions?
 - b. Is the transferring of EBS license funding to organizations that expressly advocate for candidates for political office in compliance with your tax status, the tax

³ 47 C.F.R. § 27.1201(a)(3).

⁴ 47 C.F.R. § 27.1201(a)(4).

statuses of donees, and in compliance with the Commission's requirement that EBS licenses "will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations"?

4. For the 2016 tax year, you reported more than \$9 million of revenue and \$30 million of accumulated assets.
 - a. On Part III, Line 4a of your Form 990 return, you reported spending \$47,095 on providing "schools with free or low cost wireless Internet" and "Education Venture Fund, [which] seeks to reduce opportunity gaps in education by locating and funding technology start-ups with ideas to reduce gaps." How is the use of only that modest portion of your EBS license funding for those activities consistent with your required educational purpose and our license restrictions?
 - b. What is the current value of your assets attributable to revenue you have collected over the years from your EBS licenses?
 - c. What formal restrictions exist on the expenditure of your assets, and in particular, what controls exist to ensure that assets derived from EBS licenses are spent consistent with the purpose of such licenses? Produce any relevant documents to justify your answer.
 - d. Do you commit to use all of your accumulated assets and future revenue attributable to EBS licenses—including the sale of such licenses—to the provision of instructional material to accredited educational institutions or governmental organizations engaged in the formal education of enrolled students?
5. For the 2016 tax year, you reported paying \$642,346 to "EBS Support Services LLC" for management services, including \$403,832 for employee salaries. It is your highest paid contractor. On Schedule L, "Transactions with Interested Parties," you disclose that the manager of EBS Support Services is yourself (the President of Voqal) and two other key employees are paid by the contractor.
 - a. What is the compensation of each employee and contractor of EBS Support Services?
 - b. How is the compensation of each employee and contractor of EBS Support Services determined?
 - c. Do any staff, board members, contractors, or their family members have any financial interest in or dealings with EBS Support Services beyond the compensation you detail in response to 4.a., above?

- d. Have Voqal and its related entities competitively bid out for the services supplied by EBS Support Services? If so, when?
 - e. Does Voqal have a written conflicts of interest policy regarding hiring contractors? If so, provide a copy attached to your response.
6. For the 2016 tax year, you reported granting \$1 million to Public Communicators—by far your largest grant. Public Communicators appears to have been founded by you (the President of Voqal), and for the 2016 tax year, Public Communicators reported loaning you \$60,000.
- a. What relationship do any of Voqal's staff, board members, contractors, or their family members have with Public Communicators or its operating entity, Free Speech TV?
 - b. Does Voqal have a written conflicts of interest policy regarding grantees and their relationship to Voqal's staff, board members, contractors, or their family members? If so, provide a copy attached to your response.
 - c. Do you view the transfer of EBS license funding to Public Communicators in furtherance of your required educational purpose to provide instructional materials to accredited educational institutions and consistent with our license restrictions? If so, please explain.

I look forward to your prompt responses.

Sincerely,



Brendan Carr
Commissioner
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