

MEETING MINUTES
SC EDUCATIONAL BROADBAND SERVICE COMMISSION

Date of Meeting:	Thursday, October 16, 2008	
Time and Location:	1:00pm – 4:00pm	Clemson University Graduate Engineering Center 4 Research Dr., Greenville SC
Minutes Prepared By:	Gay Hoyer	

1. Attendance at Meeting

Members

1. Gary Pennington
2. George Wyatt
3. Neil Mellen
4. Jack Cooper
5. Bill Byrd
6. Dr. Joachim Taiber

Staff

1. Paul Koch
2. Gay Hoyer

2. Meeting Agenda

1. Approval of Agenda
2. Approval of Minutes of Previous Meeting
3. Overview of Commission Research into Experts and Scope of Representation
 - a. Broadband Market Expertise – Bill Byrd
 - b. FCC Spectrum License Auction Expertise – George Wyatt
 - c. Technical Expertise – Dr. Joachim Taiber
 - d. FCC Legal Expertise – Gary Pennington
4. Discussion/Information Regarding Status of Technical School's Leasing of Spectrum
Presented by: Neil Mellen
5. Presentation by Clemson University Regarding Research Opportunities Arising from Mobile Broadband Communication and How it Impacts the Value of the Spectrum
Presented by: Jim Martin, Assistant Professor, School of Computing, Clemson University
6. Discussion/Information Regarding Other States'/Schools' Actions with Respect to the Leasing of Excess Spectrum Capacity
Presented by: Gary Pennington; Marshall Hart
7. Next Steps

3. Meeting Notes, Decisions, Issues

The third regular meeting of the South Carolina Educational Broadband Service Commission was called to order at 1:00pm on October 16, 2008 at Campbell Graduate Engineering Center, Room 401, 4 Research Drive, Greenville, S.C. by Gary Pennington. Mr. Pennington instructed the audience to register their name and email address on the sign-in sheet so that information on upcoming meetings could be emailed to them. Participants were informed that the meeting was being recorded. Mr. Pennington opened the meeting and asked that agenda item 7 be changed to read

“ETV Continued Discussion– Presenter David Crouch.” Mr. Wyatt made a motion to accept the agenda with the change, a motion was made and the agenda was accepted. A motion was then made to adopt the minutes from the last meeting. Motion was made and the minutes were adopted without changes. It was noted for the record that Public Notice of the Meeting was made on October 14th. Gary Pennington announced the resignation of Commission Member Ellen Ruff.

3. Meeting Notes, Decisions, Issues – Continued

Overview of Commission Research into Experts and Scope of Representation

Mr. Pennington advised the Commission that as they consider experts to aid in the decision making process, to keep in mind that the budget available is limited. However, the Commission must engage the appropriate professionals to help it do the job correctly.

a. Broadband Market Expertise

Presented by Bill Byrd

- ✓ Bill Byrd researched professionals that would be able to assist the Commission in market valuation of the excess broadband spectrum and discovered that there are a limited number of qualified experts in this field.
- ✓ Several frequency valuation methods used to determine the market value are: (1) Digital Bit Valuation (2) Coverage Area Valuation (3) Population Coverage Valuation (4) Population Income Valuation and (5) Combination Valuation.
- ✓ It was suggested that Gartner Consulting would be a possible candidate, but when contacted, Gartner was not qualified in this area.
- ✓ Another candidate was BIA Financial. When contacted it was discovered that they had worked with ETV and the previous broadband committee so they are familiar with the State’s situation. This group is well qualified and provided information about their company and services as well as a proposal.
- ✓ BIA has an associate, Kim Randolph, who is well qualified in the area of spectrum valuation. A copy of her bio was provided.
- ✓ Another candidate is Excelsio Communications, who also did a joint proposal in conjunction with Rini Coran, PC and John Mansell Associates.
- ✓ Excelsio has WiMAX Consulting and Experience Expertise, Rini Coran has EBS Spectrum Transaction Experience and Expertise and John Mansell Associates has Expertise and Experience in Spectrum Valuation.
- ✓ It was also suggested that the Commission could engage Clemson University to help the Commission make its own valuation and possibly save on expenses.
- ✓ It was suggested that the commission do as much as they could without the help of experts and Gary Pennington said that he would like for the commission to be as independent as possible. However, there have been past instances where there have been deals done and then there were audits done of the deals and there was a lot of public criticism admonishing a committee for not having done more research to determine the true value of the spectrum.

b. FCC Spectrum License Auction Expertise

Presented by George Wyatt

- ✓ Looked at Bennett & Bennett, a law firm with auction license expertise.
- ✓ George Wyatt spoke with Dee Herman, who sent information on his firm, rates for services as well as bios for himself and Caressa D. Bennett.
- ✓ Gary Pennington asked that George Wyatt check back with Mr. Herman and obtain more information on the firm’s experience with EBS licenses, developing RFPs, determining market valuation, evaluating proposals, negotiating and executing lease agreements, and guiding clients through FCC regulatory hurdles.

c. Technical Expertise

Presented by Dr. Joachim Taiber

- ✓ Looked for experts both inside and outside of the State of South Carolina.
- ✓ Dr. Taiber found the names of several experts both inside and outside the state of South Carolina. These experts focused on wireless communication, Catalyst computing and expanding broadband to rural areas.
- ✓ Before the Commission can speak with the experts, it must first decide the scope of work needed from the technical expert and whether the Commission wants to use a local expert, an out of state expert, or both.
- ✓ Some items that the Commission may want to have the experts address: (1) Identify the capability of the spectrum (2) How far will the spectrum reach and how much bandwidth can it carry (3) The types of equipment available to maximize network services (4) How to broaden the pool of bidders.
- ✓ The Commission must determine the amount of money that can be spent on hiring an expert.
- ✓ The scope of work for the expert could be: (1) Assist the Commission in the preparation of an RFP that clearly identifies new potential uses of the spectrum and to put a requirement in the RFP to build a business case on how this is best going to serve the state of South Carolina and what the financial model might be. (2) Assist the Commission as it releases the RFP to identify those segments of the market that have not been traditionally been identified to bid on this type of spectrum for the EBS Licenses in order to broaden potential scope of bidders. (3) Conduct a technical review of the bids to determine which presents from a technical standpoint the best use of the spectrum.

d. FCC Legal Expertise - (Handout Provided)

Presented by Gary Pennington

- ✓ Gary Pennington provided a summary of 5 law firms with FCC Regulatory Experience. The summary listed the primary contact, attorney rate per hour, relevant experience and the size of the firm. Most of these law firms are very familiar with this type of case and have written RFPs. Once an attorney is selected, the selection has to go to the Executive Director of the Budget and Control Board for approval and then to the Attorney General's Office.
 - Dow Lohnes PLLC
 - Bennet & Bennet PLLC
 - Fish & Richardson, PC
 - Law Offices of Evan D. Carb, LLC
 - Rini Coran, PC
- ✓ A brief overview was given of the Proposal provided by Dow Lohnes PLLC. This is the firm that represents SCETV and drafted the response to the questions posed to SCETV by the previous Broadband Study Committee.
- ✓ A brief overview was given of the Proposal provided by Bennet & Bennet PLLC. This firm represented Mississippi in the development of their EdNet system. They also represent some of the local Independent exchanges in South Carolina which could pose a possible conflict.
- ✓ A brief overview was given of the Proposal provided by Fish & Richardson, PC. This is the largest firm and commands the highest rate. The firm has represented EBS clients for the past 25 years and has been around for all legislation. Has negotiated many deals and has a spectrum valuation analyst on staff. This could potentially provide cost savings to us. This candidate also provided a scope of work.
- ✓ A brief overview was given of Law Offices of Evan D. Carb, LLC. This is the smallest firm

consisting of only one lawyer. Mr. Carb has 13 years experience and has assisted clients with EBS lease negotiations.

- ✓ An overview was given of the last firm, Rini Coran, PC. This firm has represented many EBS clients and has been extensively involved in the FCC rule making process regarding EBS licenses. They have also drafted several RFPs and negotiated subsequent leases.
- ✓ Regardless of the attorney chosen, the commission would utilize this person to help manage any other players outside of the Commission as well as help the Commission stay organized and assist with the writing of the RFP. It was decided that choosing the attorney be one of the more urgent matters to be decided.
- ✓ The Commission was able to shorten the list to two possible candidates: Fish Richardson PC and Rini Coran, PC.
- ✓ Gary Pennington will contact both firms as to their schedules and determine a date they can come before the Commission and make a proposal.

Discussion/Information Regarding Status of Technical Schools' Leasing of Spectrum Presented by Neil Mellen

- ✓ Neil Mellen spoke with Trident Tech and found that they are currently in negotiations with Clearwire and hope to have a contract and revenue stream in place by April 2009. They do not feel that there will be an interference issue; however a clause was put in the contract.
- ✓ Trident Tech felt that they have full authority to go forward with their negotiations, and did not feel that their efforts would interfere with the Commissions efforts. They saw no advantage in working with the Commission and are moving ahead on their own.
- ✓ The Commission asked that Mr. Mellen contact Trident again to ask if they would be willing to keep the Commission informed of their progress.
- ✓ Jackie DiMaggio of Greenville Tech was present at the Meeting to give an update on their progress.
- ✓ Greenville has a RFP in place that is similar to the Trident RFP; however, Greenville has the unique situation as that they have to first deal with Sprint who has a "First Right of Refusal".
- ✓ A contract with Sprint (original contract was held by GTI who was purchased by Sprint) has been in place for about 15 years; they have a lease for the spectrum but are not currently using it.
- ✓ Greenville was self-transitioned to the mid-range. The equipment was purchased by Clearwire to prevent interference with its transition in the Charlotte NC area.
- ✓ Greenville Tech agreed to keep the Commission informed of their progress.

Presentation by Clemson University Regarding Research Opportunities Arising from Mobile Broadband Communication and How it Impacts the Value of the Spectrum

Presented by Dr. Jim Martin, Assistant Professor

- ✓ Gave an overview of WIMAX related activities on the Clemson Campus.
- ✓ There is an experimental WIMAX network on campus funded by the Dept. of Justice. The network operates at 4.9 gigahertz and is licensed through the local police department.
- ✓ The project revolves around helping public safety understand what WIMAX can do for them.
- ✓ This project shows the importance of research and development, and perhaps the Commission should consider writing something into the RFP that takes into consideration research and development.

Discussion/Information Regarding Other States'/Schools' Actions with Respect to the Leasing of Excess Spectrum Capacity

Presented by Marshall Hart, Associate, Pennington Law Firm

- ✓ Provided a summary of information pertaining to the leasing of excess EBS spectrum by other states and schools throughout the country. Currently there is very little information

available to the public regarding most EBS leases, as the terms of the deals have not been released and most of them have confidentiality aspects to them.

ETV Follow-up Discussion

ETV represented by David Crouch and Dean Byrd

- ✓ To be in compliance ETV must move all spectrums to digital.
- ✓ Currently ETV has transitioned 3 BTAs by turning off transmission and using telephony to provide the needed services.
- ✓ These were BTA 74, 177 and 91.
- ✓ There are 5 remaining BTAs need to be transition: BTA 147, 312, 335, 72 and 436.
- ✓ ETV currently doesn't have a plan in place for transitioning these BTAs.
- ✓ The Commission and ETV discussed whether ETV is the proper party to file the appropriate documents with the FCC to preserve the spectrum. Since the legislation does not authorize the Commission to file on behalf of ETV, it is believed that ETV holds this responsibility.
- ✓ There is no known proponent likely to come forward to submit a plan of transition by the 01/19/09 deadline.
- ✓ At this point in time the only option is to self-transition by either purchasing the digital equipment and move to the mid-range channels or go dark and rely on other technology as was done in the 3 earlier BTAs.
- ✓ ETV estimates to self transition would cost approximately 3 to 4 million dollars to move to the mid-band in digital form or to go dark.
- ✓ ETV went dark in the other 3 BTAs because the schools did not want to go digital but instead preferred internet delivery of their programs and states the other 5 BTAs prefer the same.
- ✓ Currently ETV has no funds in their budget for transition.
- ✓ The focus must be on preserving the licenses and continuing to deliver services to the 52 school districts in the remaining 5 BTAs.
- ✓ There needs to be some type of plan in place to deal with the emergency transition so that the licenses are not forfeited in the remaining 5 BTAs.
- ✓ For clarification, the first 3 BTAs are not substantially transitioned, however we have until the year 2010 before it becomes an issue, since a plan had been filed.
- ✓ Important Dates: (1) January 19, 2009 is the latest date the transition initiation plan are due to the FCC (2) April 20, 2009 is the latest date to file a self-transition plan.
- ✓ Gary Pennington asked ETV to consult with their legal counsel for an opinion on what options exist for transition given the current status, and asked that this information be shared with the Commission.
- ✓ Only ETV, as the license holder, has the authority to initiate self-transition.
- ✓ The Commission asked ETV to put together an itemized budget for the cost to go off-line in the last 5 BTAs and transition to the internet service.
- ✓ ETV felt they would be able to have the budget to the commission by Monday, October 20th.
- ✓ Gary Pennington then recapped that ETV would have the budget to the Commission by Monday, that ETV should consult with their legal counsel as to a brief opinion on what the ramifications are of not meeting the April 20, 2009 deadline for self-transition.
- ✓ Paul Koch informed the Commission that the Treasurer's Office has a "Master Lease" program that would allow ETV to borrow the funds with the understanding that it would be paid back within so many months or when funds may be available from whoever is transitioning. (Provided the "Master Lease" program still has funds available)

4. Next Steps and Action Items

1. Gary Pennington will schedule the two Attorney Firms to come and make a presentation before the Commission.
2. Must deal with the issue of the preservation of the license with ETV.
3. Need to develop a "plan A" for self-transition.
4. Need to develop a "plan B" for proponent transition through some successful RFP.
5. Next meeting will be determined by the schedules of the two attorneys to be interviewed.
6. The attorneys may be interviewed via teleconference instead of an in person meeting.