

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	

COMMENTS

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys, hereby submits its comments in response to the *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*") in the above-captioned proceeding.¹

The *Second FNPRM* solicits comment from the public as to how it should license those portions of the A, B, C, D and G Group Educational Broadband Service ("EBS") channels that are

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5992, 6060-68 (2008) [*"Second FNPRM"*]. On June 26, 2008, the Wireless Telecommunications Bureau extended the comment and reply comment deadlines for the *Second FNPRM* to September 22, 2008 and October 22, 2008, respectively. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order, 23 FCC Rcd 10163 (WTB 2008).

not already within the Geographic Service Area (“GSA”) of a license.² The diversity of comments submitted when the Commission proposed the licensing of this EBS white space in the 2003 *Notice of Proposed Rulemaking* and the 2004 *Further Notice of Proposed Rulemaking* illustrates that the issues presented by the *Second FNPRM* are quite complex and that resolution will require the balancing of a variety of competing interests.³

As the Commission is well aware, “EBS eligible entities have not been able to file applications for new stations since 1995.”⁴ In the October 2002 white paper that effectively commenced this proceeding, the National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”), along with WCA, advised the Commission that because of the “substantial demand for [EBS] spectrum” that had developed, “it is time for the Commission to adopt rules that will allow the Commission, for the first time since 1995, to accept applications . . . for the current ITFS white space – areas not within the GSA of any incumbent licensees.”⁵

During the six years since that filing, the demand identified by NEBSA and CTN has only increased. The Commission’s decisions in this docket to implement a new 2.5 GHz band plan and

² It is worth noting that while there are a handful of EBS licensees operating on the E and F Group Broadband Radio Service (“BRS”) channels on a grandfathered basis, the Commission’s 1996 overlay auction resulted in the licensing of the remainder of that spectrum. *See Amendment of Parts 21 and 74 With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Services*, Report and Order, 10 FCC Rcd 9589 (1995).

³ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rule Making and Memorandum Opinion and Order, 18 FCC Rcd 6722 (2003); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004).

⁴ *Second FNPRM*, 23 FCC Rcd at 6060-61.

⁵ “A Proposal for Revising the MDS and ITFS Regulatory Regime,” submitted by the Wireless Communications Ass’n Int’l, Inc., the National ITFS Association and the Catholic Television Network, RM-10586, at 42 (filed Oct. 7, 2002). At the time of that filing, NEBSA was known as the National ITFS Association.

to adopt new service rules have made it possible, for the first time, for EBS spectrum to be utilized for the cost-effective provision of broadband services both to educational users and, *via* commercial leasing, to the general public. The Commission has correctly recognized that “the opportunities presented by the new technical rules and band plan create additional demand for EBS spectrum” from both EBS eligibles and from the commercial industry.⁶ Thus, WCA applauds the Commission for soliciting comment in the *Second FNPRM* as to how this ever-increasing demand should be met through the licensing of the EBS white space.

WCA’s interest in the Commission’s prompt licensing of the EBS white space has long been a matter of record before the Commission.⁷ WCA continues to believe that the Commission should move promptly towards licensing the EBS white space, and to do so in a manner that both advances the Commission’s educational vision for EBS and facilitates a continuation of the financial and operational support from commercial operators that has spurred the growth of EBS. Towards that end, WCA has engaged representatives of the EBS community in a series of discussions since the release of the *Second FNPRM* in the hope of developing an industry-wide consensus as to how the Commission should license the EBS white space.⁸

Unfortunately, to date that effort has not proven successful. WCA anticipates that the Commission today will receive a wide range of proposals from the EBS community, reflecting

⁶ *Second FNPRM*, 23 FCC Rcd at 6060-61; *citing* “Notice of Instructional Television Fixed Service Filing Window From October 16, 1995, through October 20, 1995”, *Public Notice*, Report No. 23565A (rel. Aug. 4, 1995).

⁷ *See, e.g.*, Comments of the Wireless Communications Ass’n Int’l, Inc., on Further Notice of Proposed Rulemaking, WT Docket No. 03-66, at 20-26 (filed Jan. 10, 2005); Reply Comments of the Wireless Communications Ass’n Int’l, Inc., on Further Notice of Proposed Rulemaking, WT Docket No. 03-66, at 19-32 (filed Feb. 8, 2005).

⁸ To promote that process, WCA endorsed the request by NEBSA and CTN that the Commission extend the comment and reply comment dates for the *Second FNPRM* and thereby give the parties additional time to arrive at a consensus. *See* Letter from Paul J. Sinderbrand, Counsel to Wireless Communications Ass’n Int’l, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 03-66 (filed June 16, 2008).

fundamentally different perspectives as to how the EBS white space should be licensed. WCA looks forward to reviewing the proposals submitted by EBS interests and intends to continue working with the leaders of the EBS community towards a consensus. Ultimately, however, WCA believes that educators, students and the general public will benefit most from a solution that promptly licenses the EBS white space in a manner that permits EBS licensees to continue meeting their educational objectives through mutually-beneficial commercial relationships with wireless broadband operators across the country.⁹ WCA intends to work cooperatively with the Commission and the EBS community to find a solution that achieves this result.

Respectfully submitted,

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⁹ The Commission has long recognized that this “symbiosis” between educators and commercial operators is critical to the success of the EBS service, and this will be no less true in the EBS white space. *See, e.g., Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112, 19152 (1998); *Amendment of Parts 2, 21, 74 and 91 of the Commission’s Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, Report and Order, 94 F.C.C. 2d 1203 (1983).