

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Amendment of Parts 1, 21, 73, 74 and 101 of the) WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed) RM-10586
and Mobile Broadband Access, Educational and Other)
Advanced Services in the 2150-2162 and 2500-2690 MHz)
Bands)

Part 1 of the Commission's Rules - Further Competitive) WT Docket No. 03-67
Bidding Procedures)

Amendment of Parts 21 and 74) WT Docket No. 02-68
of the Commission's Rules With Regard to) RM-9718
Licensing in the Multipoint)
Distribution Service and in the)
Instructional Television Fixed Service for the)
Gulf of Mexico)

To: The Commission

REPLY COMMENTS

The Northern Arizona University Foundation, Inc. ("NAUF" or the "Foundation"), by its counsel, hereby submits its reply to certain of the opening Comments filed in this proceeding.

Two issues are of concern to the Foundation: Protection of EBS licenses from interference emanating from operations in the Gulf of Mexico, and White Space licensing.

NAUF is an affiliate of Northern Arizona University in Flagstaff, AZ. Among its corporate purposes is the management of wireless educational broadband facilities in support of the educational mission of the University. The Foundation is licensed by the Commission for the

operation of Educational Broadband Service (“EBS”) stations. Among these are authorizations for EBS facilities on the Gulf Coast of Florida, such as WLX-678 in Naples. Hence, NAUF has a particular interest in Gulf area licensing policies, as well as White Space licensing more generally.

Gulf of Mexico Comments

American Petroleum Institute (“API”) and Broadpoint, Inc. (“Broadpoint”) have filed Comments urging, among other things, that the Commission allow Gulf of Mexico licenses to operate within 12 miles of the shoreline. NAUF urges the Commission to reject this proposal.

The 12-mile rule has been used in a number of analogous contexts, and there is no reason to depart from this in the case of EBS. These contexts include 700 MHz, the Advanced Wireless Service, and the Wireless Communications Service. It also includes the Broadband Radio Service (“BRS”). The Commission’s attention to this issue in the case of BRS is particularly instructive. In its March 2008 ruling in this proceeding the Commission stated as follows:

“Establishing the boundary of a Gulf Service Area at [the 12-mile limit] will ensure that land-based providers can provide service to land-based areas near the shore, which would not be the case were we to establish the boundary at the shoreline, as providers would need to limit their signal level at the boundary. We believe that this approach is a balanced resolution of the matter and also is consistent with the rules for other Part 27 services.”¹

The commenters have offered no persuasive reason to depart from this well-settled rule. Indeed, BRS spectrum is commonly used with EBS spectrum in the provision of service to subscribers. It would be illogical not to provide the same 12-mile geographic separation for EBS that the Commission has approved for BRS.

¹ *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, FCC 08-83, 23 FCC Rcd 5992 (2008) at para. 126 (hereinafter cited as the “Order”).

Broadpoint argues that there are no schools that would be served off-shore, and that EBS licensees do not have BTAs justifying a 12-mile geographic separation. *Id.* at 9-12.

However, this argument disregards the fact the off-shore platforms themselves, and the workers thereon, may have a need for in-service and other training curricula which an EBS licensee would be well-positioned to provide.

It also disregards the fact that the growth of EBS in recent years has been due to the Commission's foresight in sanctioning the lease of excess EBS capacity to operators like Sprint and Clearwire which are in a position to provide next generation wireless services offshore using EBS channels.²

To be sure, EBS spectrum has not been licensed on a BTA basis as has BRS. But EBS is licensed with GSAs, the effect of which for EBS licensees like NAUF, which hold licenses near the Gulf Coast, is to extend their protected coverage area well offshore. Thus, whether it be a BTA or a GSA is immaterial in this context.

In this regard, the Order observes that interference due to ducting is not a phenomenon confined to the Gulf of Mexico (*id.* at para 123). Ducting nonetheless exacerbates the problem of coordination as between an off-shore licensee and one located on land.³ It was in light of this that former Rule 21.902(c) (1) prescribed special interference protections for MDS stations transmitting over water. Adopting the 12-mile separation for EBS, which API has previously

² See *Report and Order in Gen Docket No. 80-112 and CC Docket No. 80-116*, 94 FCC 2d 1203 (1983).

³ See U. Surkova, M. Mikhaley, *Influence of Tropospheric Duct Parameters Changes on Microwave Path Loss*, *Microwave Review*, December, 2003, at p. 43.

agreed to for BRS,⁴ minimizes coordination burdens and facilitates the provision of EBS service right to the shoreline of the densely populated Gulf Coastal areas.

One other point has been raised in Gulf Comments that also warrants a response. API argues for allowing non-EBS eligibles to hold spectrum in rural areas where it suggests educational institutions may not be located. *Id.* at 8-9. However, it is speculative at this point whether and, if so, how much EBS spectrum may remain unlicensed after EBS licensing of white areas (discussed in the next section), much less where that spectrum might be located. Even more importantly, the proposal is at odds with the Commission's rejection just four years ago of proposals that looked to eliminate the EBS eligibility requirement.⁵

White Space

The opening Comments express a variety of views on White Space licensing from GSA maximization,⁶ to restricting eligibility to local educators,⁷ to allowing applications from existing EBS licenses but accompanied by detailed technical showings of the specific White Space areas being sought,⁸ to auctions open to non-EBS eligibles⁹, among others.

⁴ *Order* at para. 126 (“While API originally recommended that we establish the boundary at the shoreline, we note that API ‘no longer opposes establishing the boundary of the Gulf Service Area at 12 nautical miles from the shoreline’”)

⁵ *Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 03-66*, FCC 04-135, 19 FCC Rcd 14165 (2004) at para. 152 (“we conclude that it is in the public interest to retain EBS eligibility and content restrictions”).

⁶ E.g. The National EBS Association (“NEBSA”); The Source for Learning, Inc.; Bellville Independent School District.

⁷ Catholic Television Network.

⁸ Hispanic Information and Telecommunications Network, Inc.

⁹ Adams Telcom, Inc.

In NAUF's view, automatic GSA maximization pursuant to this rulemaking, followed by a simplified auction for any remaining White Space (with a settlement opportunity between and among prospective bidders) is the preferred solution. Such an approach respects the facts that:

- Maximization is the simplest and swiftest way of bringing 2.5 GHz service to unserved areas.
- Maximization has been followed in analogous contexts such as in the case of cellular GSA expansion into unserved areas; the expansion of protected service areas from 15 to 35 miles for BRS and EBS licensees; and digital television broadcast stations.
- The need for auctions -- a form of licensing which EBS licensees are ill-equipped to deal with -- is minimized.
- Maximization reduces the number of boundaries requiring application of height--benchmarking rules and the coverage inefficiencies that this generates.

NAUF does not favor HITN's requirement for the preparation and filing of detailed technical exhibits: Such a requirement would simply add to the expense and burden of applications when the Commission could expand existing EBS GSAs by rulemaking.

CTN's proposal to restrict White Space licensing to local entities would disenfranchise numerous non-local EBS eligibles which have long held EBS licenses and which are well-positioned to bring service to adjacent areas. Expansion of existing GSAs into adjacent White Space would be simple to administer and more likely to bring service quicker to these areas than would starting from scratch with a new round of applications.

Conclusion

For the foregoing reasons, NAUF urges the Commission to adopt a 12-mile limit for any Gulf area EBS licenses, and to authorize by rulemaking expansion of existing licensees' GSAs into White Space.

Respectfully submitted,

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October 22, 2008