

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 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)	WT Docket No. 03-66 RM-10586
)	
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
)	

To: The Federal Communications Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), by its attorneys, hereby submits these Reply Comments repeating its call for the Federal Communications Commission (“Commission”) to permit non-educational institutions to obtain Educational Broadband Service (“EBS”) licenses in the Gulf of Mexico, thereby ensuring that the entire 2.5 GHz band is available for offshore use.¹

Only one commenter, the National EBS Association (“NEBSA”), raised concerns regarding licensing EBS spectrum in the Gulf of Mexico. NEBSA, however, merely repeats previously repudiated arguments and offers no basis for denying access to the EBS in the Gulf.

¹ See Amendment of Parts 1, 21, 73 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2161 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 and Declaratory Ruling*, 23 FCC Rcd 5992 (2008)(“*Third Order on Reconsideration*”).

The Commission should not accept NEBSA's unsupported contentions that interference or lack of demand should prevent use of the full 2.5 GHz band in the Gulf of Mexico. Instead, the Commission should modify its eligibility rules to permit the oil and natural gas industry to make use of EBS spectrum offshore.

A. *NEBSA's Unsupported Claims of Potential Interference Are Not a Valid Reason to Deny the Use of EBS Spectrum in the Gulf of Mexico*

NEBSA calls a decision to license EBS offshore at this point "premature" and suggests that the Commission wait for successful deployment of Broadband Radio Service ("BRS") facilities before determining whether to license EBS in the Gulf of Mexico.² NEBSA's rationale for delaying the licensing of EBS apparently is the same manufactured concern regarding "ducting" that the Commission already has rejected in this proceeding. Indeed, just this year the Commission stated that "[d]ucting is not a phenomenon that is limited to the Gulf of Mexico."³ NEBSA offers no evidence to the contrary and the Commission should not expend additional resources revisiting old arguments.

In fact, NEBSA does not even attempt to support its conclusory statements that interference concerns should prevent 2.5 GHz band services from being made available in the Gulf of Mexico. The only purpose served by NEBSA's empty assertion that the Commission should "wait" to license EBS spectrum in the Gulf of Mexico is to needlessly and indefinitely delay the availability of service to the Gulf. As API has previously stated, even if interference to land-based licensees from Gulf of Mexico operations occurs (and nothing indicates that such interference is more likely than incidences of interference between land-based operators) offshore licensees will be required to resolve such interference in accordance with the

² NEBSA Comments at 3.

³ *Third Order on Reconsideration* at ¶ 128.

Commission's current rules. The Commission previously found with respect to the BRS that it has not been shown "that Gulf licensees are incapable or unwilling to work out interference problems in the same manner as other licensees."⁴

NEBSA's unsupported concerns regarding interference already have been rejected by the Commission and do not serve as a basis for denying licensing of EBS spectrum in the Gulf of Mexico.

B. *The EBS Eligibility Rules Should Be Changed to Allow Non-Educational Entities to Obtain EBS Licenses in the Gulf of Mexico*

NEBSA's statement that the availability of EBS offshore should be delayed since API has not identified any "specific educational need or purpose for using EBS channels in the Gulf" misses the central issue in this proceeding.⁵ The Commission has requested comment on whether it should make changes to its EBS educational use requirements in light of the fact that "there are no schools or universities in the Gulf of Mexico."⁶ To the extent that there is no educational presence in the Gulf of Mexico to make use of EBS spectrum, reserving such spectrum for educational institutions is unjustified.

For that same reason, NEBSA's request that if EBS ultimately is licensed in the Gulf it should "be licensed to qualified educational applicants"⁷ is irrational and, given the lack of educational applicants, would only serve to create an insurmountable obstacle to deployment of EBS spectrum facilities in the Gulf of Mexico. Further, NEBSA's request that the Commission

⁴ *Id.*

⁵ NEBSA Comments at 3.

⁶ *Third Order on Reconsideration* at ¶ 180.

⁷ NEBSA Comments at 4.

follow current EBS eligibility requirements in the Gulf is at odds with its own statement that “no specific educational need or purpose for using EBS channels in the Gulf” has been identified.⁸

The fact remains that access to the full 2.5 GHz band, including the BRS and EBS allocations, throughout the entire Gulf of Mexico, including the area within 12 nautical miles of the shore, will be tremendously beneficial to offshore industries. API agrees with the Comments of Broadpoint, Inc. (“Broadpoint”) that there are significant “current and longterm needs for the use of 2.5 GHz spectrum in the Gulf” and that extending Gulf of Mexico EBS licenses to the shoreline is in the public interest.⁹

As the record in this proceeding demonstrates, the 2.5 GHz band represents a large amount of spectrum that could be put to beneficial use in the hostile marine environment to support the safe, effective production of oil and natural gas. It appears likely that EBS will be used onshore to provide cutting edge communications services. There is no reason that the availability of similar services should be foreclosed offshore in the Gulf – particularly when the alternative is merely to let EBS spectrum lie fallow.

⁸ NEBSA Comments at 3.

⁹ Broadpoint Comments at 4.

CONCLUSION

For the forgoing reasons, API requests that the Commission discard NEBSA's unsupported objections that would only serve to delay access to unused 2.5 GHz band spectrum and permit non-educational institutions to obtain licenses for EBS spectrum in the Gulf of Mexico.

Respectfully submitted,

**THE AMERICAN PETROLEUM
INSTITUTE**

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