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 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 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions	)	MM Docket No. 97-217
	)	
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
	)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	)	WT Docket No. 00-230

REPLY OF PETROCOM LICENSE CORPORATION IN SUPPORT OF THE PETITION FOR RECONSIDERATION OF THE AMERICAN PETROLEUM INSTITUTE

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August 31, 2006

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REPLY OF PETROCOM LICENSE CORPORATION IN SUPPORT OF THE PETITION FOR RECONSIDERATION OF THE AMERICAN PETROLEUM INSTITUTE

PetroCom License Corporation ("PetroCom") hereby respectfully submits this reply to the comments of the Wireless Communications Association International, Inc. ("WCA") and Sprint Nextel Corporation ("Sprint") on the Petition for Reconsideration of the American Petroleum Institute (the "API Petition") in the above-captioned proceeding. The issues raised in the API Petition are important and highly relevant to telecommunications consumers in the Gulf

of Mexico, which include producers of 25 to 30 percent of the nation's domestic energy supply. These telecommunications consumers are critical to the nation's infrastructure and economy.

PetroCom is a full-service telecommunications and network solutions company serving the business community, with particular emphasis in the energy industry. Headquartered in New Orleans, Louisiana and founded in 1983, PetroCom created the first offshore cellular network in the world. What began as a single cell site off the coast of Galveston, Texas in 1986 quickly grew into a 95,000-square mile cellular network in the Gulf of Mexico, reaching from Brownsville, Texas to Mobile, Alabama. PetroCom initiated the portion of this proceeding relating to the Gulf of Mexico in 1996 with a petition for rulemaking requesting that the Commission amend its rules to permit licensing of MDS and ITFS spectrum in the Gulf.[1/]

Ensuring that our nation's oil and gas exploration and production companies have access to reliable state-of-the-art broadband communications, including wireless broadband service provided in the 2.5 GHz band, from multiple sources – including Gulf-centered providers such as PetroCom – is obviously in the public interest. PetroCom recognizes that Sprint and WCA question the procedural proprietary of the API Petition. However, the public's interest in reliable, advanced wireless communications in the Gulf of Mexico greatly outweighs the putative procedural deficiencies decried by WCA and Sprint. In any case, the issues raised by API are precisely the sort anticipated by section 1.429(b)(3) of the Commission's rules, which states that, regardless of any other procedural concerns, a petition for reconsideration will be granted when "[t]he Commission determines that consideration of the facts relied on is required in the public

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[1/] *See* Petition For Rulemaking of Gulf Coast MDS Service Company, May 21, 1996 ("Gulf Coast Petition"). Gulf Coast MDS Service Company was the predecessor-in-interest to PetroCom. *See also 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 Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd. 6722, 6759 ¶ 91 (2003) ("*2003 NPRM*") (discussing history of PetroCom Petition For Rulemaking).

interest." 47 U.S.C. § 1.429(b)(3). The Commission should therefore grant the API Petition and create a Broadband Radio Service ("BRS") license area for the Gulf of Mexico.

I. RELIABLE ADVANCED COMMUNICATIONS IN THE GULF OF MEXICO ARE VITAL TO SUPPORT THE NATION'S CRITICAL INFRASTRUCTURE

The irony presented by the timing of this debate over the use of spectrum in the Gulf of Mexico should not be lost upon the Commission. This week marks the one-year anniversary of the destruction and havoc wreaked in the Gulf of Mexico and along the Gulf Coast by Hurricane Katrina. In addition to the loss of hundreds of lives and hundreds of thousands of homes and businesses, hurricane Katrina disabled the oil and gas industry in the Gulf area for weeks and, in some cases, months, with the impact being the worst shortfall in energy supply since the 1973 Arab oil embargo.[2/] Communications were completely severed with many drilling platforms, while up to 75% of the manned platforms in the Gulf of Mexico needed to be evacuated.[3/] The importance of maintaining a robust communications infrastructure for energy producers in the Gulf of Mexico should be obvious in light of these facts.

Furthermore, since Katrina made landfall last August, the nation has been embroiled in controversy over allegations of government failures to manage the devastation left in its wake – or to plan for the coming of future disasters.[4/] It is against this backdrop that the FCC must evaluate Sprint's and WCA's request that the Commission *not* allocate what no one denies is under-utilized BRS spectrum for use by wireless broadband service providers in the Gulf of

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2/ *See, e.g.,* Jad Mouawad, *Katrina's Shock to the System*, New York Times, September 4, 2005.

3/ *See, e.g.,* Kevin G. Hall, *Storm Swats Oil Operations, Kicks Up Prices*, San Jose Mercury News, August 30, 2005, at A7.

4/ *See, e.g.,* Christopher Lee and Anushka Asthana, *Damage and Doubts Linger After Katrina: Study Cites Wide Skepticism of U.S. Readiness for This Year's Hurricane Season*, The Washington Post, August 21, 1006, at A13.

Mexico. PetroCom strongly urges the Commission to see the big picture represented by the API Petition and reconsider its decision to forego creating a Gulf Service Area in the 2.5 GHz band.

II. THE PUBLIC INTEREST IN RELIABLE ADVANCED COMMUNICATIONS IN THE GULF OF MEXICO GREATLY OUTWEIGHS ANY PROCEDURAL CONCERNS, AND IN ANY CASE 47 C.F.R. § 1.429(b)(3) COMPELS RECONSIDERATION

The Commission stated from the beginning of this proceeding that the public interest would be served by creation of a Gulf Service Area in the 2.5 GHz band,[5/] and early commenters generally supported that approach.[6/] But because no party submitted comments in the latest round of pleading on the issue, the Commission found in the *2006 Order* that "[t]he record does not demonstrate a demand for BRS or EBS operations in the Gulf of Mexico at this time."[7/] Recognizing the public's ongoing (if unrepresented) interest, however, the Commission in the same breath made clear that "[w]e will entertain recreating a Gulf Services Area, for BRS and EBS, once parties demonstrate an interest in providing service in the Gulf of Mexico…We reserve the right to revisit the Gulf Service Area issue for BRS and EBS should future circumstances warrant."[8/]

PetroCom offers no excuse for not submitting comments in response to the *2003 NPRM*, nor does it attempt to explain why any of the other commenters that supported the creation of a Gulf Service Area in the early stages of this proceeding (or API) did not file comments in the

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5/ *See 2003 NPRM,* 18 FCC Rcd. at 6761 ¶ 93 ("As no commenter opposed the establishment of a Gulf Service Area, we adopt the proposal to create a Gulf Service Area.").

6/ *Id.* ("Generally, commenters support creation of a Gulf Services Area.").

7/ *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 on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd. 5606, 5762 ¶ 383 (2006) ("*2006 Order*").

8/ *Id.*

latest round. However, PetroCom notes, as did API, that the 2.5 GHz spectrum has undergone a significant transformation since the time that the FCC initiated this proceeding. It is now apparent that the 2.5 GHz spectrum will be among the few bands where WiMax technology will be developed.[9/] When this proceeding was initiated, the 2.5 GHz band was among several that might support a variety of different wireless services in the Gulf of Mexico. Now, it is evident that the 2.5 GHz band will be uniquely able to support an important broadband wireless platform using a technological standard being developed for nationwide – and even global – use. In order to make productive use of this technology in the Gulf, the FCC should issue authorizations for its use there.[10/]

Therefore, regardless of whether PetroCom, API, or others should have participated in an earlier phase of this proceeding, the facts remain that support for creation of a Gulf Service Area has existed since the beginning of this proceeding as reflected by the early comments, that the Commission has similarly recognized the public's interest in robust advanced communications services in the Gulf of Mexico, and that API and PetroCom have now provided, late or not, record evidence of an immediate need for 2.5 GHz spectrum in a Gulf Service Area. It would be irresponsible for the FCC to preclude the development of WiMax operations in the Gulf by restricting the use of the band in which it is most likely to be developed.

9/ *See, e.g.,* Elena Malykhina, *Bold Bet On WiMax; Sprint Nextel, With Spectrum Aplenty, Will Spend up to $3 Billion on a Next-Gen Wireless Network*, Informationweek, August 16, 2006, at 25 ("The WiMax Forum has designated two licensed bands-2.5 GHz, most of which is owned by Sprint Nextel and startup Clearwire, and 3.5 GHz, which isn't available in the United States."); Anne Morris, *Making Waves*, Total Telecom, August 11, 2006 ("Mobile WiMAX proponents are hoping to see a global 2.5-GHz allocation for mobile WiMAX by 2007").

10/ PetroCom does not address here the precise service areas or other parameters that should govern the licensing of the 2.5 GHz spectrum in the Gulf, although it generally supports the positions expressed in the API Petition. Moreover, PetroCom's position on, for example, where boundaries for Gulf based systems should established, are well known to the Commission. *See, e.g., Cellular Service and Other Commercial Radio Services in the Gulf of Mexico*, Order on Reconsideration, 18 FCC Rcd 13169 (2003); *Cellular Service and Other Commercial Radio Services in the Gulf of Mexico*, Report and Order, 17 FCC Rcd 1209 (2002) (collectively referred to as the "*Gulf Cellular Proceeding*").

If the Commission takes the approach here that it took to personal communications service spectrum in the *Gulf Cellular Proceeding* – that land based carriers are generally permitted to provide service using the spectrum on a secondary basis – it will produce an unacceptable result for two reasons. First, it will provide land based carriers with a windfall of additional service area (albeit potentially on a temporary basis). Second, and more importantly, it will deny the oil and gas industry the obvious benefit of having a communications service provider dedicated to the nation's energy needs, rather than a service provider that would offer such service as an afterthought to its land based services.

These facts represent the very state of affairs anticipated by section 1.429(b)(3) of the Commission's rules, which states that a petition for reconsideration will be granted when "[t]he Commission determines that consideration of the facts relied on is required in the public interest." WCA's and Sprint's complaints of procedural impropriety are therefore legally incorrect and, in any case, are irrelevant to the Commission's larger public interest obligation.

The communications requirements of the Gulf of Mexico should not be ignored now that API (and PetroCom) have supplied the record evidence that the Commission found lacking in the last round of comments. Rather than vindicating the Commission's interest in procedural integrity and administrative efficiency, denial of the API Petition would acutely disserve the public's interest in maintaining and strengthening a robust and advanced system of wireless broadband communications in the Gulf of Mexico.

III. CONCLUSION

For the reasons set forth above, PetroCom strongly urges the Commission to grant the API Petition and create a Gulf Service Area for the 2.5 GHz band.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert G. Kidwell, hereby certify that on this 31st day of August, 2006, I served copies of the foregoing Reply on the parties listed below via E-mail and regular mail, postage prepaid:

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