

**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 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
	)	
Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands	)	IB Docket No. 02-364
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	

**COMMENTS OF BROADPOINT, INC.**

Russell H. Fox  
Jennifer A. Cukier\*  
MINTZ LEVIN COHN FERRIS  
GLOVSKY & POPEO, P.C.  
701 Pennsylvania Ave., NW  
Suite 900  
Washington, DC 20004  
202-434-7300  
*Counsel for Broadpoint, Inc.*

September 22, 2008

\* Admitted to practice in New York only. Practicing in the District of Columbia under the supervision of Members of the Washington, D.C. office of Mintz Levin.

## SUMMARY

Broadpoint, Inc. (“Broadpoint”) supports the licensing of 2.5 GHz Educational Broadband Service (“EBS”) spectrum in the Gulf of Mexico on a commercial basis. As the Federal Communications Commission (“FCC” or “Commission”) recognized, there is a need for additional spectrum capacity to support critical oil and gas exploration and production activities in the Gulf.

There is no need to reserve spectrum for educational purposes in the Gulf; there are no educational institutions in the Gulf. Any attempt to establish eligibility for EBS operations in the Gulf would be contrived, at best, and would make the spectrum unavailable for the purpose for which it is best suited in this unique location -- the support of oil and gas exploration and production.

The Commission should proceed with the licensing of EBS spectrum in the Gulf, independent of the rules it adopts for licensing EBS spectrum in the remainder of the country. In order to have a consistent licensing approach with BRS spectrum in the Gulf, the FCC should license the spectrum in the three geographic regions it already created. Unlike BRS spectrum, the Commission should use the shoreline as the boundary between Gulf and terrestrial licensees. The rationale that justified the placement of the boundary at twelve nautical miles from shore for BRS services does not exist for EBS spectrum. Finally, the FCC should create two licenses for EBS spectrum in the Gulf, one that is naturally paired with the contiguous BRS spectrum in the Upper Band Segment (“UBS”) of the 2.5 GHz band and the other that consists of the remainder of the EBS spectrum.

**TABLE OF CONTENTS**

**SUMMARY** ..... ii

**TABLE OF CONTENTS** ..... iii

**I. Introduction**..... 2

**II. Comments** ..... 4

**A. EBS Spectrum Should be Licensed for Use in the Gulf of Mexico**..... 4

**B. EBS Spectrum Should be Converted to Commercial Use in the Gulf of Mexico** .... 7

**C. EBS Spectrum in the Gulf Should be Licensed Separately from the EBS Spectrum in the Remainder of the Country**..... 9

**1. EBS Spectrum Should be Licensed Using the Already Established BRS Zones in the Gulf of Mexico**..... 9

**2. The Shoreline Should be the Boundary between Terrestrial and Gulf-Based Licenses** ..... 9

**3. The Commission Should Create Two Licenses in Each Geographic Zone** ..... 12

**III. Conclusion** ..... 14

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

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of	)	WT Docket No. 03-66
the Commission’s Rules to Facilitate the	)	RM-10586
Provision of Fixed 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	)	WT Docket No. 03-67
Competitive 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	)	
	)	
Review of the Spectrum Sharing Plan Among	)	IB Docket No. 02-364
Non-Geostationary Satellite Orbit Mobile	)	
Satellite Service Systems in the 1.6/2.4 GHz	)	
Bands	)	
	)	
Amendment of Part 2 of the Commission’s	)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, Including Third Generation Wireless	)	
Systems	)	

**COMMENTS OF BROADPOINT, INC.**

Broadpoint, Inc. (“Broadpoint”), by its attorneys, and pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”)<sup>1/</sup> hereby submits its comments in response to the Second Further Notice of Proposed Rule Making

---

<sup>1/</sup> 47 C.F.R. § 1.415.

(“*Second Further Notice*”) in the above referenced proceedings.<sup>2/</sup> In the *Second Further Notice*, the FCC, among other things, seeks comment on the potential licensing of Educational Broadband Service (“EBS”) spectrum in the 2.5 GHz band in the Gulf of Mexico.

## **I. Introduction**

Broadpoint is the premier provider of communications services to the oil and gas and maritime industries in and around the Gulf of Mexico. Broadpoint offers its customers three principal types of service:

**Satellite.** Broadpoint offers customers several ready-to-deploy satellite packages, ranging from low-cost shared bandwidth options to sophisticated private networks and burstable bandwidth on demand. The company launched its C-band teleport and switch facility in 1986 to accommodate these complex services and has since added services on Ku-band frequencies. Today, Broadpoint offers extensive geographic coverage via sites operating on and offshore. Satellite service options include: voice and voicemail, Internet data, Voice over Internet Protocol (“VoIP”), faxing, multiple lines and PC connectivity, connectivity to public and corporate networks, backhaul, high-volume system control and data acquisition (“SCADA”), single hop on demand (“SHOD”), video, large bandwidth applications, emergency response and dispatch services.

**Cellular.** Broadpoint offers the world’s first offshore digital wireless network based on the GSM technology platform. This extensive network services more than 100,000 square miles of the Gulf of Mexico and is available across much of the Western Hemisphere through roaming partners. The optimum mobility of Broadpoint’s cellular products and services keep people and their data connected through voice, voicemail, texting, faxing, Internet, e-mail, data and low-volume SCADA.

**Services.** Leading energy and marine companies rely on Broadpoint to engineer, design and optimize their voice and data networks. Engineers perform field and turnkey engineering services and apply path profiles, reliability studies, topographic maps and more to create customized systems. Services include digital microwave systems, cellular systems, two-way systems, telephone switching networks, multiple-address paging

---

<sup>2/</sup> *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, et al.*, 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). Although doing business as Broadpoint, the company is licensed by the FCC as PetroCom License Corporation (“PetroCom”). Unless indicated, the company is referred to here as Broadpoint.

systems, satellite local area network (“LAN”) and wide area network (“WAN”) and very small aperture terminal (“VSAT”) antenna systems.

In the Third Order on Reconsideration, Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order in this proceeding (the “*Order*”), the FCC noted the history of the potential licensing of what is now the Broadband Radio Service (“BRS”) spectrum in the Gulf of Mexico.<sup>3/</sup> In particular, in 2002 the FCC initiated a proceeding designed to assess whether to license BRS spectrum in the Gulf of Mexico.<sup>4/</sup> Based on responses to the *Gulf NPRM* and subsequent notices and further notices of proposed rule making, the FCC found that the record did not demonstrate a demand for licensing BRS or EBS spectrum in the Gulf.<sup>5/</sup> Consequently, the FCC declined to create a Gulf Service Area for BRS or EBS.<sup>6/</sup> In response to a request by the American Petroleum Institute (“API”), the FCC reconsidered its decision not to authorize BRS spectrum in the Gulf.<sup>7/</sup> The Commission found that “establishing BRS service areas in the Gulf could provide a means for meeting an important communications need in a critical area, as well as enhance emergency communications in the region.”<sup>8/</sup> Accordingly, the FCC created three licensing zones for the Gulf of Mexico and will ultimately license all available BRS spectrum in each of the three zones.<sup>9/</sup>

---

<sup>3/</sup> *Order* ¶¶ 115-118.

<sup>4/</sup> *Id.* ¶ 115; *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*, Notice of Proposed Rulemaking, 17 FCC Rcd 8446 (2002) (“*Gulf NPRM*”).

<sup>5/</sup> *Order* ¶ 118.

<sup>6/</sup> *Id.*

<sup>7/</sup> *Id.* ¶ 119.

<sup>8/</sup> *Id.* ¶ 122.

<sup>9/</sup> *Id.* ¶ 127. While Broadpoint recognizes that it is beyond the scope of this proceeding, it urges the FCC to expeditiously license the BRS spectrum in the Gulf of Mexico.

While the Commission decided to license BRS spectrum in the Gulf in the *Order*, it made no decisions regarding the licensing of EBS spectrum. Instead, the *Second Further Notice* seeks whether (and potentially how) the EBS spectrum should be licensed in the Gulf (and, more broadly, throughout the U.S.).<sup>10/</sup> Because Broadpoint and its customers have current and long-term needs for the use of 2.5 GHz spectrum in the Gulf, it is pleased to have the opportunity to submit the following comments, supporting the prompt licensing of EBS spectrum in the Gulf for commercial purposes.

## **II. Comments**

### **A. EBS Spectrum Should be Licensed for Use in the Gulf of Mexico**

Broadpoint applauds the FCC's decision to seek comment on the licensing of EBS spectrum in the Gulf of Mexico. As recent events have demonstrated, communications capabilities are critical in the Gulf of Mexico and access to the entire 2.5 GHz band there will ensure that the full array of spectrum resources are available to serve this important region. In its petition for reconsideration of the FCC's decision not to license BRS spectrum in the Gulf, API convincingly demonstrated why it is important that the FCC make these spectrum resources available in this geographic area.<sup>11/</sup>

In its petition for reconsideration, API described the oil and gas industry's substantial and expanding presence in the Gulf of Mexico, noting the approximate 4,000 oil and natural gas platforms and nearly 100 exploration wells located in the Gulf.<sup>12/</sup> In light of the nation's

---

<sup>10/</sup> *Id.* ¶ 180.

<sup>11/</sup> Petition for Reconsideration of the American Petroleum Institute, WT Docket No. 03-66, RM-10586, WT Docket No. 03-67, MM Docket No. 97-217, WT Docket No. 02-68, RM-9718, WT Docket No. 00-230, IB Docket No. 02-364, ET Docket No. 00-258 (filed July 19, 2006) ("API PFR").

<sup>12/</sup> API PFR at 7; *Order* ¶ 123 (noting the significant expansion and increased importance of offshore drilling activities in the Gulf).

ongoing energy crisis, the importance of oil production activities in the Gulf has only intensified since API filed its petition in 2006. The Gulf of Mexico is now home to over 25% of the nation's oil production,<sup>13/</sup> producing an estimated 1.3 million barrels per day of oil and 7.4 billion cubic feet of natural gas.<sup>14/</sup> As press reports indicate, "the United States has become increasingly dependent on the Gulf Coast."<sup>15/</sup>

While the country has used offshore drilling in the Gulf to sustain domestic output, such reliance has made the U.S. "more vulnerable to the vagaries of the weather."<sup>16/</sup> Three years ago, Hurricanes Katrina and Rita devastated more than 100 oil platforms in the Gulf, closing down a quarter of U.S. oil production.<sup>17/</sup> As API noted, these natural disasters have resulted in the oil and natural gas industry placing "increased importance on the use of rapidly deployable IP-enabled broadband services to support both permanent facilities and disaster recovery efforts."<sup>18/</sup> Unfortunately, concerns over natural disasters in the Gulf are no less prevalent today. For instance, recent Hurricanes Gustav and Ike resulted in the evacuation of much of the personnel from the currently operating 717 manned oil platforms and shutdowns of an estimated 80% of all oil production and 70% of all natural gas production in the Gulf.<sup>19/</sup>

---

<sup>13/</sup> See Brian K. Sullivan and Camilla Hall, *Ike Hits Cuba, May Keep Gulf Oil Installations Closed*, BLOOMBERG, Sept. 8, 2008.

<sup>14/</sup> See Erwin Seba, *US Gulf Oil Output at a Trickle ahead of Gustav*, REUTERS, Aug. 31, 2008.

<sup>15/</sup> *Id.*

<sup>16/</sup> See Steven Mufson, *Oil Industry Waits to Assess Storm's Impact*, WASH. POST, Sept. 2, 2008, at A04.

<sup>17/</sup> See Erwin Seba, *US Gulf Oil Output at a Trickle ahead of Gustav*, REUTERS, Aug. 31, 2008.

<sup>18/</sup> *Order* ¶ 124.

<sup>19/</sup> See *Gulf Oil and Gas Producers Give Ike a Serious Look*, ASSOCIATED PRESS, Sept. 7, 2008.

As API explained and the FCC has recognized, the Gulf is an underserved area where spectrum licenses generally are not available and where many facilities are too far from shore to receive wireless services from land-based providers.<sup>20/</sup> Further, much of the nation's spectrum is unsuitable for use in marine environments such as the Gulf, and much of the spectrum that is suitable already has been allocated for other purposes.<sup>21/</sup> Given the critical need for reliable telecommunications services in the Gulf and the limited availability of spectrum suitable for such purposes, the FCC should license the EBS spectrum in the Gulf without further delay.

In addition, establishing EBS service areas will facilitate the provision of new advanced telecommunications services in the Gulf.<sup>22/</sup> Telecommunications providers, such as Broadpoint, are continuing to roll out new wireline, wireless and satellite services to the underserved Gulf area. The Gulf's growing telecommunications infrastructure "is enabling the oil companies to have better information faster, and the conversion from old microwave radio systems to modern satellite, cellular and fiber-optic networks means those data pathways are more reliable and less vulnerable to outages from storms."<sup>23/</sup> The FCC should encourage these activities by licensing the EBS spectrum due to "the critical role that communications plays in ensuring the safe, effective production of oil and natural gas in the Gulf."<sup>24/</sup>

Broadpoint and others would make use of the EBS spectrum in a variety of ways. First, Broadpoint would use the spectrum to backhaul cellular traffic from its cell sites in the Gulf. Broadpoint currently principally uses satellite links to backhaul cellular traffic. However, the

---

<sup>20/</sup> *Order* ¶ 124.

<sup>21/</sup> *Id.* ¶ 125; API PFR at 8.

<sup>22/</sup> API PFR at 8.

<sup>23/</sup> See Brad Hem, *Telecommunications Needs Being Met in Gulf*, HOUSTON CHRON., Aug. 24, 2008.

<sup>24/</sup> *Order* ¶ 125.

use of satellite services is costly and puts an important element of Broadpoint's system out of its control (and in the control of third-party satellite services providers). If Broadpoint were able to use 2.5 GHz resources instead of relying on satellite services provided by others, it could potentially provide less costly and more reliable cellular service. Moreover, as wireless services support additional video and data services, the bandwidth required to backhaul those services will increase. Broadpoint will use the additional capacity provided by 2.5 GHz spectrum to more efficiently backhaul bandwidth-intensive applications. Second, as the leading provider of wireless services in the Gulf, Broadpoint expects to evaluate the provision of whatever services the 2.5 GHz band ultimately supports to the oil and gas and maritime industries. Commission licensing of EBS spectrum in the Gulf will ensure that there is sufficient spectrum available to provide these and as-yet undetermined and undeveloped services.

**B. EBS Spectrum Should be Converted to Commercial Use in the Gulf of Mexico**

Today, licenses for EBS facilities may be issued to “an accredited institution or a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television to such accredited institutions and governmental organizations.”<sup>25/</sup> This eligibility limitation is plainly inappropriate for the Gulf of Mexico. Accordingly, the Commission should modify its regulations so that there are no eligibility limitations on the use of EBS spectrum in the Gulf of Mexico. To the best of Broadpoint's knowledge, there are no legitimate educational institutions or other entities that engage in activities that would make them eligible for licensing of EBS spectrum in the Gulf. Therefore, if the FCC retains the current eligibility restrictions on EBS spectrum in the Gulf, the capacity will be unutilized or under-utilized.

---

<sup>25/</sup> 47 C.F.R. § 1201(a).

Worse, if the FCC retains its eligibility restrictions, it will certainly receive applications from entities that will promise to provide services that make them eligible in the EBS service. The Commission should look beyond these claims to the obvious point -- there are no educational institutions in the Gulf of Mexico. Any entity that proposes to provide services designed to support their eligibility will almost certainly lease the maximum capacity permissible to a provider of commercial services in any case. There is abundant and critical oil and gas exploration and production and related activity in the Gulf that could be supported with the use of the 2.5 GHz EBS spectrum. Instead of facilitating what would certainly be a charade -- the recognition of an entity claiming to be eligible for EBS licensing in the Gulf -- the FCC should license the spectrum directly to the entities that will use it.

As the Court of Appeals has recognized in the past, the FCC need not regulate communications services in the Gulf in the same manner as it does on land.<sup>26/</sup> Therefore, while there may be a need to reserve spectrum for educational purposes on land, there is no such need to reserve the spectrum in the Gulf of Mexico. To the contrary, there is a need to permit the spectrum to be used for commercial purposes in the Gulf to help meet the communications requirements that support the vital activities that occur in the Gulf. The Commission asks whether it should expand the EBS eligibility rules to permit a nationwide non-profit entity to become licensed in the Gulf.<sup>27/</sup> There is no basis for adopting this approach. If the EBS spectrum will not be used for the initially intended purpose of supporting educational institutions (which it will not in the Gulf), then the FCC should ensure that the spectrum be put to its highest and best use -- supporting the critical oil and gas and maritime industries in the Gulf of Mexico.

---

<sup>26/</sup> *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (remanding FCC Gulf licensing proceedings because the Commission failed to account for “the significant differences between land-based and Gulf-based licensees”).

<sup>27/</sup> *Order* ¶ 190.

**C. EBS Spectrum in the Gulf Should be Licensed Separately from the EBS Spectrum in the Remainder of the Country**

The FCC raises important questions regarding the mechanisms by which it should generally license vacant EBS spectrum.<sup>28/</sup> Whatever rules the Commission adopts as a result of those inquiries should not be applied to the EBS spectrum in the Gulf. Instead, the FCC should apply the regulations it already adopted for licensing vacant BRS spectrum to the Gulf EBS spectrum. Moreover, because the process for licensing vacant EBS spectrum is likely to be different than the procedures the FCC has already adopted for licensing vacant BRS spectrum, the FCC should immediately proceed to license the EBS spectrum in the Gulf, and not wait to adopt EBS licensing rules for the remainder of the country.

**1. EBS Spectrum Should be Licensed Using the Already Established BRS Zones in the Gulf of Mexico**

Because the FCC has adopted a Gulf licensing mechanism that involves the use of three geographic zones,<sup>29/</sup> the FCC should continue that approach and license the EBS spectrum in the same manner. This will permit a consistent licensing approach for both EBS and BRS spectrum in the Gulf.

**2. The Shoreline Should be the Boundary between Terrestrial and Gulf-Based Licenses**

However, unlike the approach it took for licensing BRS spectrum, the FCC should adopt the shoreline as the boundary for the EBS licensing area in the Gulf. As the FCC noted, API originally proposed that the BRS spectrum be licensed in the same manner as cellular spectrum, using the shoreline as the point at which the Gulf based license would begin.<sup>30/</sup> Although the FCC did not adopt this approach for the BRS spectrum, it should use the shoreline as the BTA

---

<sup>28/</sup> *Id.* ¶¶ 181-204.

<sup>29/</sup> *Id.* ¶ 127.

boundary for EBS spectrum. The principal reason that the Commission permitted the license area for land based entities to extend twelve nautical miles into the Gulf was to permit those licensees to provide services to the same customers on land and in nearby off-shore areas.<sup>31/</sup> In deciding to extend the Gulf BRS license area twelve nautical miles from shore, the FCC noted that it adopted the same licensing approach for the Wireless Communications Service (“WCS”), the 700 MHz C Block and the Advanced Wireless Service (“AWS”).<sup>32/</sup> However, even if the FCC made the correct decision in those cases, there is no evidence that the 2.5 GHz band will be used in the same manner as the WCS, 700 MHz C Block and AWS services. That is, there is no reason to assume that land based licensees using the 2.5 GHz EBS spectrum will also be required to use their licensed spectrum up to twelve nautical miles offshore as a natural extension of their land-based licenses.

To the contrary, the types of communications requirements that would be satisfied from sites within twelve nautical miles of shore are the same as the communications requirements that would be satisfied from sites further from shore. As Broadpoint noted above, it would likely use 2.5 GHz spectrum for backhaul of cellular and other mobile wireless traffic. Because oil and gas production and exploration facilities are also located within twelve miles of shore Broadpoint would be required to backhaul mobile wireless traffic from locations within twelve miles from shore just as it would from locations further than twelve miles from shore. A Gulf licensee would, therefore, lose a material part of its coverage area if it were not permitted to operate the spectrum within twelve miles of shore that it is permitted to use twelve nautical miles from

---

<sup>30/</sup> *Id.* ¶ 126.

<sup>31/</sup> *Id.* As the Commission properly noted in the *Order*, the ducting phenomenon, often cited as a basis for creating a different service area boundary for the Gulf, also occurs over land (as well as over water). *Id.* ¶ 128. Ducting is not, therefore, a relevant issue in determining the location of the Gulf service area boundary.

shore. Therefore, the FCC should use the shoreline to create EBS Gulf of Mexico licensing areas.

Broadpoint recognizes that in the *Order*, the FCC adopted the twelve nautical mile limit for licensing BRS spectrum in the Gulf.<sup>33/</sup> However, there is no reason to replicate that limitation when licensing EBS spectrum in the Gulf. While there may have been legitimate reasons to establish the boundary twelve miles from shore for BRS spectrum (despite the fact that, as Broadpoint notes above, there is no basis to believe that the area twelve nautical miles from shore will be a natural extension of terrestrial licensees' coverage areas), that rationale does not exist for EBS spectrum.

First, EBS spectrum is not licensed on a geographic area basis today, and therefore there are no concerns regarding the protection of existing BTA licensees that hold EBS spectrum. In the *Order*, the Commission, agreeing with The Wireless Communications Association International, Inc. ("WCA"), set the BRS boundary at twelve nautical miles from the shoreline in part to "ensure that land-based providers can provide service to land-based areas near the shore."<sup>34/</sup> In establishing this boundary, the FCC found persuasive WCA's argument that "the BRS BTA authorizations for areas bordering the Gulf should extend at least to the boundaries of the counties that comprise the BTA, including areas that are within counties but beyond the coastline."<sup>35/</sup> The FCC was concerned that setting the BRS Gulf license area boundary at the shoreline would impermissibly encroach upon the already existing BTA authorizations. This concern does not apply to EBS spectrum. Because there are no equivalent EBS BTA licenses

---

<sup>32/</sup> *Id.* ¶ 126.

<sup>33/</sup> *Id.*

<sup>34/</sup> *Id.*

<sup>35/</sup> *Id.* ¶ 121.

bordering the Gulf, there is no reason to extend the EBS boundary beyond the shoreline to accommodate existing BTA authorizations.<sup>36/</sup>

Second, as noted above, there is no evidence that the area twelve miles from shore is a natural extension of the area that a terrestrial 2.5 GHz EBS licensee would serve. Even if the FCC assumed, in the *Order*, that the area twelve nautical miles from shore is a natural extension of a commercial licensee's land based service, that assumption is not applicable to land based EBS licensees, whose mission is to serve educational institutions, all of which are situated on land.

### **3. The Commission Should Create Two Licenses in Each Geographic Zone**

In its 2004 Report and Order in this proceeding, the FCC reconfigured the 2.5 GHz band to, among other things, permit licensees to secure contiguous (as opposed to interleaved) spectrum.<sup>37/</sup> As a result of that band reconfiguration, virtually all of the BRS spectrum is located in the so-called Upper Band Segment ("UBS"). While the FCC did not specify the type of technology that must be employed in the 2.5 GHz band<sup>38/</sup> as a practical matter, in order to use Frequency Division Duplex ("FDD") technology with the maximum separation between transmit and receive channels, BRS licensees must enter into leasing arrangements with EBS licensees that hold spectrum in the Lower Band Segment ("LBS"). In order to avoid this result in the Gulf, the FCC should create a license that could be naturally paired with the BRS spectrum that will be

---

<sup>36/</sup> Of course, if an existing EBS licensee's service area extends into the Gulf, that licensee would be protected by the geographic area licensee in the same way, for example, that incumbent BRS licensees are protected by BTA licensees.

<sup>37/</sup> *Amendment of Parts 1, 21, 73, 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 2150-2162 and 2500-2690 MHz Bands, et al.*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 14165 (2004) ("*Report and Order*").

<sup>38/</sup> *Id.* ¶¶ 131-134.

otherwise licensed in the Gulf. In particular, one EBS Gulf license should consist of the BRS1, A1-3, B1-B3 and C1-C3 channels. Those channels can be paired with the BRS2, E1-E3, F1-F3 and H1-H3 channels that the Gulf BRS licensee will hold.<sup>39/</sup> The remaining EBS channels would constitute a second EBS license in the Gulf. Because the UBS/LBS and Middle Band Segment (“MBS”) are governed by different rules (and Broadpoint does not suggest a different approach for the Gulf), applicants could choose the spectrum block most appropriate to the type of service they envision. Broadpoint does not propose that the FCC limit a single entity from acquiring all of the EBS spectrum in the Gulf; an applicant could propose to acquire both EBS blocks, along with the BRS spectrum in the Gulf.<sup>40/</sup>

---

<sup>39/</sup> Should the licensee of EBS spectrum in the Gulf not wish to use TDD technology, it would be free to use the spectrum in a non-paired manner.

<sup>40/</sup> See *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 08-94, Joint Opposition to Petitions to Deny and Reply to Comments of Sprint Nextel Corporation and Clearwire, at 21-41 (filed August 4, 2008) (pointing out that the 2.5 GHz band has never been subject to a spectrum screen or cap and that there is no reason to subject the spectrum in that band to a screen or cap today).

### III. Conclusion

Broadpoint hereby submits the foregoing comments and asks that the FCC take action consistent with the views expressed herein.

Respectfully submitted,

BROADPOINT, INC.

*/s/ Russell H. Fox* \_\_\_\_\_

Russell H. Fox

Jennifer A. Cukier\*

MINTZ LEVIN COHN FERRIS

GLOVSKY & POPEO, P.C.

701 Pennsylvania Ave., NW

Suite 900

Washington, DC 20004

rfox@mintz.com

Tel: 202-434-7300

Fax: 202-434-7400

*Counsel for Broadpoint, Inc.*

Dated: September 22, 2008

\* Admitted to practice in New York only. Practicing in the District of Columbia under the supervision of Members of the Washington, D.C. office of Mintz Levin.