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

REPLY 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")[1/] hereby submits its Reply Comments in response to the initial comments of other parties to the

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[1/] 47 C.F.R. § 1.415.

Second Further Notice of Proposed Rulemaking ("*Second Further Notice*") in the above referenced proceedings.[2/] 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. Background

In its comments, Broadpoint urged the Commission to license the 2.5 GHz band Educational Broadband Service ("EBS") spectrum in the Gulf of Mexico for commercial purposes. It stated that there is no need to reserve 2.5 GHz spectrum for educational purposes; there are no educational institutions in the Gulf of Mexico. Conversely, Broadpoint pointed out that the spectrum could be best employed for the purpose most relevant in the Gulf -- the support of oil and gas exploration and production. Broadpoint urged that the FCC license the EBS spectrum in the three geographic areas already designated for licensing of 2.5 GHz Broadband Radio Service ("BRS") spectrum. Broadpoint urged the Commission to use the shoreline as the boundary between Gulf and terrestrial licensees. Finally, Broadpoint urged that the FCC create two licenses for EBS spectrum in the Gulf, one that is 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.

Of the many parties that submitted initial comments in this proceeding, only two -- the American Petroleum Institute ("API") and the National EBS Association ("NEBSA") --

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[2/] *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 otherwise indicated, the company is referred to here as Broadpoint.

considered the licensing of EBS spectrum in the Gulf of Mexico.[3/] Accordingly, Broadpoint is pleased to have this opportunity to submit Reply Comments to address the API and NEBSA comments.

II. Reply Comments

A. EBS Spectrum Should be Licensed in the Gulf of Mexico

Broadpoint strongly agrees with API that EBS spectrum should be licensed in the Gulf for commercial operations. As API notes " . . . absent changes to the EBS eligibility restrictions 112.5 MHz of EBS spectrum will lie fallow in the Gulf of Mexico instead of being put to beneficial use."[4/] When it decided to license the BRS spectrum in the Gulf, the Commission recognized the important function that telecommunications capacity has in this critical region.[5/] API's comments highlight these needs:

> Demand for energy resources is at historic highs. In response, the U.S. oil and natural gas industry is extending its exploration and production activities into increasingly remote areas while leveraging existing assets to maximize productivity. The U.S. oil and natural gas industry's ability to supply resources to the American market, while at the same time ensuring the protection of life, property and environment, depends on technological innovation. For example, capital costs to develop a single offshore field can range into the billions of dollars. It is simply irrational that offshore facilities, which are technological marvels in every other respect, should not have access to the same advanced broadband communications available throughout the rest of the country, particularly when ample unallocated spectrum is available.[6/]

NEBSA asserts that it is premature for the FCC to determine whether to license EBS spectrum in the Gulf. It states that "[t]he decision to license BRS spectrum in the Gulf was not

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[3/] Comments of the American Petroleum Institute (filed Sept. 22, 2008) ("API Comments"); Comments of the National EBS Association (filed Sept. 22, 2008) ("NEBSA Comments").

[4/] API Comments at 3.

[5/] *Second Further Notice* ¶ 122 ("It is clear 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.").

[6/] API Comments at 5 (citations omitted).

without controversy, particularly relating to the phenomenon of 'ducting' and serious concerns about interference to land-based wireless broadband systems in areas around the Gulf."[7/] The Commission resolved the "controversy" to which NEBSA refers by finding that ducting is no more problematic in the Gulf of Mexico than it is elsewhere.[8/] Similarly, in deciding to license BRS spectrum in the Gulf, the Commission rejected concerns about potential interference to land based systems from the operation of 2.5 GHz band facilities in the Gulf.[9/] NEBSA has not challenged these Commission determinations and cannot be permitted to do so now in what is fundamentally an untimely petition for reconsideration. The Commission rejected NEBSA's concerns about the use of 2.5 GHz spectrum in the Gulf in the *Second Further Notice* and there is no reason that the Commission should depart from those decisions here.

NEBSA also argues that the need for additional 2.5 GHz spectrum in the Gulf is speculative.[10/] It is not, and the FCC recognized the important requirements that 2.5 GHz spectrum would satisfy in the *Second Further Notice*.[11/] NEBSA is correct that API, which urged the FCC to license 2.5 GHz spectrum in the Gulf, did not identify an educational need or purpose for using EBS spectrum in the Gulf. As Broadpoint pointed out, there are no educational institutions in the Gulf and any attempt to justify the use of the EBS spectrum for an

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7/ NEBSA Comments at 3.

8/ *Second Further Notice* ¶ 128 ("Ducting is not a phenomenon that is limited to the Gulf of Mexico, and the record does not support separate or special rules only for the Gulf.").

9/ *Id.* (finding that the record "has not shown that Gulf licensees are incapable or unwilling to work out interference problems in the same manner as other licensees" and that "the Commission's existing technical rules . . . can easily be utilized to resolve any interference problems that may arise on a case-by-case basis").

10/ NEBSA Comments at 3.

11/ *Second Further Notice* ¶¶ 124-25 (expressing concern that the Gulf of Mexico is "an underserved area where spectrum licenses generally are not available" and concluding that "the 2495-2690 MHz band is one of the few bands available and adequate for operations in support of off-shore oil and gas facilities").

educational institution would be contrived, at best.[12/] There are, however, FCC-recognized needs for communications capacity to support the critical oil and natural gas industry that could be satisfied using EBS spectrum. Accordingly, the EBS spectrum should be made available for commercial operations in the Gulf.

B. The Shoreline Should be the Boundary between Terrestrial and Gulf-Based Licensees

In its comments, Broadpoint demonstrated that the boundary between terrestrial and Gulf-based EBS licensees should be the shoreline. API agreed, noting that "[t]he edge of any offshore EBS licensee should be allowed to extend to the shoreline at high-mean tide, except that offshore EBS licensees should be required to honor the service areas of incumbent EBS licensees that may extend into the Gulf of Mexico."[13/] Broadpoint agrees. As API points out, to do otherwise would exclude hundreds of offshore oil and natural gas facilities located within twelve miles of the coastline from using the advanced communications facilities that EBS spectrum can support.[14/]

C. The Commission Should License EBS Spectrum Using the Already Established BRS Zones in the Gulf of Mexico

API argues that the FCC should license the EBS spectrum using the 35-mile radius geographic service specified in the rules today. As Broadpoint noted, the FCC has already

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12/ NEBSA argues that EBS spectrum should not be "removed from the educational reserve, licensed to entities that are not qualified under 27.1201, or used for purposes inconsistent with those set forth in Section 27.1203." NEBSA Comments at 4. There is absolutely no evidence that there is any need for EBS spectrum in the Gulf for entities qualified under Section 27.1201 for purposes consistent with those stated in Section 27.1203. Not a single such entity sought the use of EBS spectrum in the Gulf in the many years when it was possible to do so. Conversely, there is a demonstrated need for EBS spectrum to support oil and natural gas exploration and production activities.

13/ API Comments at 6.

14/ *Id.*

created three licensing areas for 2.5 GHz BRS spectrum in the Gulf. It may be attractive for entities licensed for BRS spectrum also to seek the use of 2.5 GHz EBS spectrum in the Gulf. In order to maximize the use of both spectrum allocations, they should be licensed over the same geographic area. The Commission has long recognized the benefits of geographic area licensing over site-by-site licensing[15/] and those benefits are even more pronounced in the Gulf of Mexico. Allowing geographic area licensing would permit a licensee to secure equipment tuned to the same frequencies and relocate that equipment at will throughout its authorized service area. Oil and gas exploration and production activities move throughout the Gulf on a regular basis and licensees would benefit from the ability to relocate facilities without the need for obtaining new or modified authorization.[16/] Moreover, oil and natural gas fields are typically much larger than 35 miles wide. A geographic area license would permit a licensee to move its equipment throughout a single field and therefore provide the maximum flexibility in the provision of communications support.

D. The FCC Should Create Two Licenses in Each Geographic Zone

In its comments, Broadpoint urged the Commission to 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

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15/ *See, e.g., 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.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, ¶ 53 (2004) (reiterating the Commission's preference for geographic licensing over site-based licensing in that "geographic licensing based on predefined service areas has significant advantages over site-based licensing because of the greater operational flexibility it gives licensees and the greater ease of administration for consumers, licensees, and regulators").

16/ *See id.* ¶ 54 ("Implementing geographic area licensing will allow licensees to rapidly deploy and modify facilities within their geographic licensing areas to provide ubiquitous service without the regulatory burdens of notifying and securing Commission approval.").

EBS spectrum. API suggests that the Commission assign offshore EBS licenses according to channel group for a total of five licenses, each with 22.5 MHz of spectrum.[17/] This approach will not maximize the potential use of the EBS spectrum in the Gulf. As Broadpoint demonstrated, much of the EBS spectrum may be naturally paired with BRS spectrum to support Frequency Division Duplex ("FDD") technology. In order to facilitate the possible use of the spectrum in a paired fashion, the FCC should license all the pairable spectrum in one channel block. There should be no mandate for a licensee to use the EBS spectrum paired with the BRS spectrum. Indeed, the holder of the BRS spectrum may be different than the holder of the EBS spectrum and each would then use its assigned spectrum in the most efficient manner possible. However, to create the *option* to use the spectrum in a paired fashion, the FCC should create a spectrum block with all of the frequencies that may be logically paired with the BRS spectrum. The remaining spectrum block would contain the rest of the EBS spectrum and could also be used to satisfy a variety of communications requirements, particularly by entities that do not foresee the need to pair the spectrum with BRS frequencies.

17/ API Comments at 7.

III. Conclusion

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

Respectfully submitted,

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