

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	

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/} and the invitation extended by the Commission in the Third Further Notice of Proposed Rulemaking (“*Third Further Notice*”) in the above-referenced proceedings,^{2/} hereby submits its comments concerning the licensing of the band 758-763/788-793 MHz (the so-called 700 MHz “D Block”) 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

^{1/} 47 C.F.R. § 1.415.

^{2/} *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 14301 (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.

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

In the *Third Further Notice*, the Commission refines its efforts to establish an interoperable public safety broadband wireless network for operation throughout the United States and its territories, including the Gulf of Mexico. In particular, the FCC proposes to auction the D Block spectrum to a commercial licensee and to require the auction winner to partner with the nationwide licensee of the public safety broadband spectrum (the band 763-768/793-798 MHz) (the “Public Safety Broadband Licensee” or “PSBL”) to establish a broadband network serving both commercial and public safety users.^{3/} The FCC held an auction for the D Block earlier this year, but the auction did not result in a winning bid. As a result, the Commission seeks comment in the *Third Further Notice* on its revised proposal for the licensing of the D Block spectrum.^{4/}

^{3/} *Third Further Notice* ¶ 1.

^{4/} *Id.*

The *Third Further Notice* proposes offering the D Block both as a nationwide license and also on a regional basis through the use of Public Safety Regions (“PSRs”).^{5/} The nationwide license covers the Gulf of Mexico area, and one of the 58 PSRs covers the Gulf of Mexico.^{6/} Based on Broadpoint and its customers’ current and long-term needs for the use of spectrum in the Gulf of Mexico, Broadpoint is pleased to have the opportunity to submit the following comments regarding the licensing of the D Block spectrum in the Gulf of Mexico.

II. Comments

A. The FCC Should Use State Jurisdictional Boundaries to Determine the Boundary between Terrestrial and Gulf-Based Licenses

While the Commission has proposed that one of the PSRs should comprise the Gulf of Mexico, it has not specified the boundary of the Gulf PSR (or the adjacent terrestrial PSRs). PSRs are generally based on state boundaries, in recognition that many public safety activities are coordinated on a state level.^{7/} Accordingly, the Commission should clarify that PSR boundaries are equivalent to state jurisdictional boundaries with respect to the land-based PSRs adjacent to the Gulf of Mexico (and that, consequently, the Gulf of Mexico PSR begins where state boundaries end).

Using state jurisdictional boundaries to define the terrestrially based D Block license areas that are adjacent to the Gulf is consistent with past Commission practice. In 2002, the Commission explained that “[i]n general, the geographic service area definitions used for non-cellular CMRS services are based on county boundaries, which extend over water pursuant to state law,” and therefore, “the licensing areas of land-based licensees in such services extend to

^{5/} *Id.* ¶ 3.

^{6/} *Id.* ¶ 3 n.6.

^{7/} *Id.* ¶ 71.

the limit of county boundaries that extend over water.”^{8/} In the *Gulf R&O*, the Commission noted that Major Trading Areas (“MTAs”), Basic Trading Areas (“BTAs”), and Economic Areas (“EAs”) are all based on county boundaries, with the distance that the boundaries of coastal counties extend over water varying state-to-state.^{9/} For example, the county boundaries of Texas and Florida extend nine nautical miles (approximately 10.36 statute miles) from the water line; the county boundary of Louisiana extends approximately 3 nautical miles (approximately 3.45 statute miles) into the Gulf; and all other states’ boundaries extend 3 nautical miles (approximately 3.45 statute miles) from the baseline into the Gulf.^{10/}

In June 2003, the FCC affirmed its earlier decision that “the licensing of [Personal Communications Service (“PCS”)] licensees along the Gulf coast are co-extensive with county boundaries.”^{11/} The Commission explained that, because PCS license boundaries are defined by MTAs and BTAs, which are expressly based on county boundaries, such county boundaries define the licensing area borders for PCS licensees both on land and in the Gulf.^{12/}

The Commission should take the same approach here. Public safety entities that serve counties that border the Gulf will be required to provide services to the extent of each county’s jurisdiction. Consequently, the D Block licensee that builds a public/private 700 MHz system

^{8/} *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico; Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, Report and Order, 17 FCC Rcd 1209, ¶ 46 (2002) (“*Gulf R&O*”); see also *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico; Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, Order on Reconsideration, 18 FCC Rcd 13169 (2003) (“*Gulf Recon Order*”).

^{9/} *Gulf R&O* ¶ 46 n.75

^{10/} See *id.*

^{11/} *Gulf Recon Order* ¶ 39.

^{12/} *Id.*

should be required to provide coverage to the edge of those jurisdictional borders. There is no reason, however, to extend the D Block licensee's service area beyond the jurisdiction of the relevant public safety licensee. The D Block licensee of the South Carolina PSR will not be authorized to provide coverage into the Georgia D Block licensee's licensed area.^{13/} Similarly, the terrestrially based licensees that border the Gulf of Mexico should not be authorized to provide coverage into the Gulf beyond the jurisdictional boundary of the public safety entities relevant to the land based licensees.

Broadpoint is mindful that, in other contexts, the FCC has determined that the land based coverage areas of wireless systems adjacent to the Gulf of Mexico extend 12 miles into the Gulf.^{14/} There is no reason to adopt that arbitrary guideline here. As Broadpoint recently demonstrated, in most services, the Commission should designate the shoreline as the boundary between land and Gulf based systems.^{15/} As Broadpoint showed, in those other services, terrestrial licensees adjacent to the Gulf likely do not need to use their licensed spectrum offshore as a natural extension of their land-based licenses. Broadpoint recognizes that the reverse is true in this proceeding: because the public/private 700 MHz system is intended to

^{13/} When public safety entities are required to operate outside of their service area, the Commission has required that the D Block licensee of that host system support roaming. *Third Further Notice* ¶ 111. The Gulf of Mexico D Block licensee would be under a similar obligation to support roaming of terrestrial-based licensees.

^{14/} 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.*, 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, ¶ 126 (2008) (establishing the Gulf service area boundary at 12 nautical miles in the Broadband Radio Service proceeding).

^{15/} See Comments of Broadpoint, Inc., WT Docket Nos. 03-66, 03-67, and 02-68, IB Docket No. 02-364, ET Docket No. 00-258 (filed Sept. 22, 2008).

support public safety operations and the jurisdiction of the public safety entities that border the Gulf extend nominally into the Gulf, so should the boundary of the D Block licensee that will build the public/private system that serves that public safety entity. However, there is no basis for the D Block licensee's service area to extend beyond the jurisdictional boundaries of any eligible public safety entity.

B. The Commission Should Clarify the Gulf D Block Licensee's Obligations to Public Safety Entities

While Broadpoint applauds the Commission's efforts to use the D Block spectrum to satisfy critical public safety needs, the Commission should clarify that the licensee of the Gulf of Mexico PSR does not have the same obligations as terrestrial D block licensees due to the particular characteristics of the Gulf service area. As the D.C. Circuit Court of Appeals recognized in the past, the Commission must account for "the significant differences between land-based and Gulf-based licensees" in its licensing proceedings.^{16/}

Although the purpose of the D Block is to "enable construction of an interoperable broadband network that would serve both commercial and public safety users,"^{17/} there are no eligible public safety users in the Gulf of Mexico. While federal public safety entities, like the U.S. Coast Guard, operate in the Gulf, these entities are not eligible D Block users. As the Commission mentioned in the *Third Further Notice*, "the Commission does not license Federal stations."^{18/} Rather, federal entities' use of the 700 MHz spectrum is incidental, subject to the

^{16/} *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (stating that the FCC need not regulate communications services in the Gulf of Mexico in the same manner as it does on land).

^{17/} *Third Further Notice* ¶ 1.

^{18/} *Id.* ¶ 331 (internal quotations omitted).

sole discretion of the Public Safety Broadband Licensee.^{19/} Consequently, there are no eligible public safety entity users operating within the proposed Gulf PSR and therefore, the Gulf D Block licensee should be under no obligation to affirmatively offer service to any public safety entity.

Because there are no eligible public safety users in the Gulf, the Commission's requirement that each PSR licensee needs to enter into a Network Sharing Agreement to negotiate the terms of the joint use of the spectrum between commercial users and public safety entities does not apply to the Gulf PSR. If there are no eligible public safety users within the Gulf and the Gulf D Block licensee has no affirmative obligation to provide service to entities eligible to provide public safety services in the Gulf, an NSA would largely be meaningless.

While the Gulf PSR licensee cannot logically have any affirmative obligation to provide a public/private network in the Gulf because there would be no entities eligible to use the system there, the Gulf D Block licensee should be willing to support and assist incidental public safety operations in the Gulf. In particular, a Gulf D Block licensee should be required to ensure that its system is compatible with (and uses the same air interface as) land based public/private systems, so that public safety entities operating out-of-region, and the Coast Guard, if authorized by the PSBL to support eligible public safety entities operating out of region, could use the Gulf D Block licensee's network if required.

C. D Block Buildout Requirements for the Gulf Should Be Based on Substantial Service

As the FCC stated in the *Third Further Notice*, the Gulf of Mexico PSR “covers a body of water and, therefore, [the Commission's] proposed population-based benchmarks may not be

^{19/} *Id.* ¶ 332.

appropriate for this PSR to meet public safety needs in that region.”^{20/} Broadpoint agrees with the Commission that population-based coverage requirements are plainly inappropriate for the unpopulated Gulf region. Moreover, as noted above, there are no entities eligible to be licensed to use the 700 MHz public safety spectrum in the Gulf and, therefore, no reason to build a public/private network to support public safety entities. Therefore, to the extent that construction requirements are designed to ensure that public safety entities can use the shared public/private network, a build-out requirement for the Gulf is meaningless.

Nevertheless, Broadpoint is mindful that, even without the need to construct a public/private network, the Commission’s rules governing construction requirements are meaningful to prevent spectrum hoarding. Accordingly, as the Commission proposed in the *Third Further Notice*, buildout requirements for the Gulf PSR licensee should be based on substantial service.^{21/} Such an obligation would conform to the construction obligation for other 700 MHz licensees.^{22/}

Using a substantial service test to determine whether coverage requirements have been satisfied is particularly well-suited for the Gulf of Mexico PSR. The FCC has stated that the substantial service criteria is designed to be flexible, allowing licensees to demonstrate how they believe the service they are providing serves the public interest.^{23/} In other contexts, the FCC has stated that it will consider a variety of factors when determining whether a licensee has provided substantial service. These factors include whether the licensee’s operations serve niche markets or focus on serving populations outside of areas serviced by other licensees; whether the

^{20/} *Id.* ¶ 161.

^{21/} *Id.*

^{22/} *Id.*; see also 47 C.F.R. § 27.14(e).

^{23/} See *Facilitating the Provision of Spectrum Based Services to Rural Areas*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, ¶¶ 73-84 (2004).

licensee's operations serve populations with limited access to communications services; and whether a licensee serves a significant portion of the population or land area of the licensed area.^{24/} This list is not exhaustive and the FCC has noted that substantial service can be demonstrated in other ways.^{25/} The substantial service method is particularly suitable for licenses in the Gulf where population-based benchmarks are inapplicable. The flexibility afforded by a substantial service showing will allow the Gulf PSR to demonstrate substantial service in a number of ways, for example, by showing service to high-traffic areas within the Gulf or to platforms or other structures located within the Gulf.

^{24/} *In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 4096, ¶ 303 (2000).

^{25/} Jennifer Prime, *Finding Substance in the FCC's Policy of Substantial Service*, 56 FED. COMM. L.J. 397, 408 (2004).

III. Conclusion

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

Respectfully submitted,

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Dated: November 3, 2008

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