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EXECUTIVE SUMMARY

Broadpoint is the premier provider of communications services to the oil and gas and maritime industries in and around the Gulf of Mexico. Because Broadpoint's energy and maritime customers are helping to establish the United States' energy independence and those customers operate in harsh and remote environments that create a unique set of communication challenges, the provision of telecommunications services that operate in those environments are critically important to the businesses operating in the Gulf of Mexico.

Broadpoint encourages the NTIA to adopt rules that facilitate the receipt of BTOP funding by broadband communications providers offering unique services to underserved business and enterprise entities. NTIA should not consider only residential locations when it assesses those areas that are unserved or underserved. Similarly, NTIA must recognize the Gulf as a separate "underserved" area that is specifically eligible for BTOP funds, despite the fact that the Gulf is not located in any State and that there are no residential "consumers" in the Gulf.

In evaluating funding applications, NTIA should favor projects that have a broad economic impact and also consider how the proposed grant can otherwise promote the public interest, public health and safety. For example, providing BTOP funding for broadband communications projects in the Gulf of Mexico region will improve the regional and national economy by facilitating job creation. It will also benefit the public by facilitating increased security, as well as permitting the installation of costly telemedicine, environmental monitoring, and vessel tracking applications.

NTIA should ensure that the development of its broadband maps reveals areas that are not attached to a specific census tract or postal code and should reflect offshore areas that are economic and business hubs. Specifically, such maps should reflect the Gulf of Mexico and the unserved businesses operating in the Gulf. With respect to determining the financial need of applicants, NTIA cannot rely on an entity's mere inability to attract capital to support a claim of financial need. Rather, NTIA should fund projects that would offer broadband services and serve the public interest but are otherwise not economically justifiable.

Broadpoint offers the following recommendations with respect to the terms NTIA is obligated to define in structuring the grant program:

- Unserved/Underserved Areas. NTIA should not focus solely on the provision of service to residential, land-based end users when determining whether areas are unserved or underserved. A more appropriate approach is to consider all end users, regardless of location and whether broadband is used for personal or business requirements. NTIA should not rely solely on Census tract areas to determine unserved and underserved areas.
- Broadband Service. NTIA should focus on funding projects for the Gulf of Mexico region that will deliver broadband access to mobile/nomadic end user devices. NTIA should adopt definitions of transmission speeds that are consistent with today's technology, so that a wide variety of potential applicants may be included in the grant program. A throughput of 2 Mbps from a carrier to customer premises equipment

(“CPE”) and throughput of 1 Mbps from CPE to a carrier should be the minimum speeds adopted for such services.

- Nondiscrimination and Network Interconnection Obligations. NTIA should ensure that any entity which receives BTOP funding must agree to interconnection and roaming on reasonable, non-discriminatory terms and conditions.

**Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, DC**

In the Matter of)

American Recovery and Reinvestment Act)
of 2009 Broadband Initiatives)

) Docket No. 090309298-9299-01
)
)

RESPONSES OF BROADPOINT, INC.

Broadpoint, Inc. (“Broadpoint”) hereby submits its responses to the questions issued by the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) regarding implementation of the Broadband Technology Opportunities Program (“BTOP”).^{1/}

INTRODUCTION AND SUMMARY

Broadpoint is the premier provider of communications services to the oil and gas and maritime industries in and around the Gulf of Mexico. Broadpoint provides cellular and satellite communications, 2-way radio, custom-engineered and emergency response solutions, antenna and tower services and broadcasting services to entities that operate offshore in the Gulf of Mexico. Broadpoint offers its customers an effective, reliable connection to their most critical assets. Because Broadpoint’s energy and maritime customers are helping to establish the United States’ energy independence and those customers operate in harsh and remote environments that create a unique set of communication challenges, the provision of telecommunications services

^{1/} Notice, *American Recovery and Reinvestment Act of 2009 Broadband Initiatives Joint Request for Information and Notice of Public Meetings*, Docket No. 090309298-9299-01, 74 FED. REG. 10716-10721 (rel. March 9, 2009) (“Notice”).

that operate in those environments are critically important to the businesses operating in the Gulf of Mexico.

The Gulf of Mexico is an essential resource for the oil and gas industry and, therefore for the United States economy. The Gulf of Mexico “accounts for about 25 percent of the oil and 15 percent of the natural gas produced in the United States.”^{2/} It produces an estimated 1.3 million barrels per day of oil and 7.4 billion cubic feet of natural gas.^{3/} Further, as the Secretary of Interior recently stated, the federal government is once again looking at the waters off U.S. shores, in particular the Gulf of Mexico, to explore “both renewable energy and traditional drilling.”^{4/} While operations in the Gulf are critical to establishing the country’s energy independence, conditions there are harsh and facilities are located at remote sites. Four years ago, Hurricanes Katrina and Rita devastated more than 100 oil platforms in the Gulf, closing down a quarter of U.S. oil production.^{5/} Unfortunately, concerns over natural disasters in the Gulf are no less prevalent today. For instance, recent Hurricanes Gustav and Ike in 2008 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.^{6/} These natural disasters and the remote nature of oil and gas operations in the Gulf make communications capability essential. As the Federal Communications Commission (“FCC” or “Commission”) has noted, these conditions have resulted in the oil and

^{2/} AMERICA’S OIL AND NATURAL GAS INDUSTRY, *Hurricane Response and Market Effect: An API Fact Sheet*, available at http://www.api.org/Newsroom/hurricane/upload/HURRICANE_FLYER_2008.pdf

^{3/} See Erwin Seba, *US Gulf Oil Output at a Trickle ahead of Gustav*, REUTERS, Aug. 31, 2008.

^{4/} Cain Burdeau, *Salazar Stresses Balance in Offshore Development*, ASSOCIATED PRESS, April 8, 2009.

^{5/} See Erwin Seba, *US Gulf Oil Output at a Trickle ahead of Gustav*, REUTERS, Aug. 31, 2008.

^{6/} See *Gulf Oil and Gas Producers Give Ike a Serious Look*, ASSOCIATED PRESS, Sept. 7, 2008.

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.”^{7/}

However, the Gulf does not yet have the rapidly deployable IP-enabled broadband resources to meet the critical requirements of this important area. Accordingly, NTIA should ensure that the rules it adopts to govern grant awards under BTOP does not inadvertently prevent funding of telecommunications projects in the Gulf.

I. THE RULES SHOULD FACILITATE THE RECEIPT OF BTOP FUNDING BY BROADBAND COMMUNICATIONS PROVIDERS OFFERING UNIQUE SERVICES TO UNDERSERVED BUSINESS AND ENTERPRISE ENTITIES

A. NTIA’s Rules Should Promote Funding of Projects that Benefit Underserved Businesses (Answer to Question 1a, 1b)

NTIA notes that Section 6001 of the Recovery Act establishes five purposes of the BTOP program. It is critical that NTIA take a broad view of those purposes. In particular, NTIA should not determine that BTOP funding is limited to promoting broadband access to residential customers as a narrow reading of the statute might suggest. Instead, NTIA should ensure that entities which provide broadband services to businesses and other entities critical to a region’s and the country’s economy are eligible for BTOP funding. For example, Broadpoint provides a majority of its services to oil and gas producers that have thousands of platforms located in the Gulf of Mexico. Their ability to access broadband services will produce direct economic benefits and they should, therefore, be considered consumers in unserved or underserved areas.

In addition to the businesses that Broadpoint and other Gulf service providers support, NTIA must recognize that there are thousands of individuals working in the Gulf, often for

^{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, 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, ¶ 124 (2008) (“*Fixed and Mobile Wireless Broadband Order*”).

weeks at a time. While these employees may not be considered typical “consumers” residing in unserved or underserved areas, they too are often without the benefits of broadband services.

B. NTIA Should Consider the Gulf of Mexico a Separate Region and Should not Rely Exclusively on States’ Guidance (Answer to Question 2)

NTIA seeks comment on the role of the States with respect to various aspects of BTOP grants. As an initial matter, because most of the Gulf of Mexico is not within the jurisdiction of the states, NTIA must recognize the Gulf as a separate “underserved” area that is specifically eligible for BTOP funds. NTIA should carefully tailor the eligibility criteria for BTOP funding so that unserved or underserved areas are not linked to a particular state or even to terrestrial locations generally.

Such a finding would complement previous findings by the FCC, which has recognized that the Gulf of Mexico is a separate and distinct region for communications licensing purposes.^{8/} As the Commission recognized, the Gulf of Mexico is an underserved area because broadband services (and spectrum licenses) are limited in availability. For instance, many facilities are too far from shore to receive wireless services from land-based providers.^{9/} NTIA should find (as has the FCC) that the Gulf of Mexico is underserved for the purposes of the BTOP program. As discussed above, employees stationed in the Gulf are in remote locations, are subject to the unpredictable and often harsh vagaries of the weather, and are entirely dependent on communications providers to reach others. Although telecommunications providers, such as Broadpoint, continue to introduce new services to the underserved Gulf, the construction of such communications systems in this region is almost prohibitively expensive. The natural

^{8/} *Fixed and Mobile Wireless Broadband Order* ¶ 124.

^{9/} *Id.* The D.C. Circuit Court of Appeals has also recognized the differences that the Gulf of Mexico presents. It directed the Commission to account for “the significant differences between land-based and Gulf-based licensees” in its licensing proceedings. *See Petroleum Commc’ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994).

characteristics of the area coupled with the extreme distances between platforms makes deployment of such technologies limited, costly, and time-consuming. Given the critical need for reliable telecommunications services in the Gulf and the limited availability of such services, the area is clearly “underserved,” and should be considered as such for purposes of the BTOP program.

Indeed, the FCC has repeatedly recognized the importance of facilitating the deployment of high-quality telecommunications services in the Gulf of Mexico region.^{10/} In establishing three distinct licensing zones for the BRS spectrum in the Gulf, 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.”^{11/} The FCC has also recognized that because the Gulf region “covers a body of water, . . . therefore, [the Commission’s] proposed population-based benchmarks may not be appropriate.”^{12/} The Commission also found that communications services in the Gulf of Mexico play a “critical role . . . in ensuring the safe, effective production of oil and natural gas in the Gulf.”^{13/} NTIA should do the same here and recognize that the Gulf of Mexico region is an underserved region that has critical broadband infrastructure needs.

Broadpoint urges NTIA not to rely exclusively on state input to determine the projects that will receive BTOP funding. Although NTIA should, as directed by Congress, seek the states’ input in crafting BTOP policies; it should not necessarily prioritize state projects over

^{10/} *Fixed and Mobile Wireless Broadband Order* ¶ 127.

^{11/} *Id.* ¶ 122.

^{12/} *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, ¶ 161 (2008).

^{13/} *Fixed and Mobile Wireless Broadband Order* ¶ 125.

private projects. If NTIA gives priority to state projects, communications providers in the Gulf will be disenfranchised from those priority projects. Non-government communications broadband providers, such as Broadpoint, have the expertise to implement broadband deployment projects that would benefit business interests that, in turn, will directly stimulate the economy. Further, excessive state involvement will impede program goals by adding an additional layer of complexity and delay to the process -- delay and complexity that the United States economy can ill-afford. NTIA should also not authorize states to distribute BTOP funds. As directed by Congress, NTIA should remain the “sole authority to approve the awards.”^{14/}

C. NTIA Should Adopt Broad Grant Eligibility Requirements that Effectively Advance the Business and Public Interests (Answer to question 3)

NTIA asks about the standard it should use to determine whether non-governmental entities should be eligible for BTOP funding. NTIA should allow grant applicants wide latitude to demonstrate the type of public interest benefits that grant of their respective applications would provide. In particular, grant applicants should not be required to demonstrate the mere number of customers or homes served. Defining eligibility broadly would satisfy Congress’s explicit intent that the NTIA create a “broad definition of entities that are eligible to receive grants,” so that “as many entities as possible [will] be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, public-private partnerships, and tower companies.”^{15/} A broad definition would also satisfy Congressional intent by ensuring that applicants are selected based on their ability to “best meet the broadband access needs of the areas to be served.”^{16/}

^{14/} H.R. REP. NO. 111-16, at 775 (2009) (“Conference Report”).

^{15/} Conference Report at 775.

^{16/} Conference Report at 774.

D. NTIA's Selection Criteria Should Favor Projects that Have the Most Significant Impact (Answer to Question 4)

NTIA asks about the factors it should consider in awarding grants. In evaluating funding applications, NTIA should consider the broad effects of a grant on the economy in particular and the public interest in general. For example, the provision of BTOP funding for broadband communications projects in the Gulf of Mexico region will improve the regional and national economy by facilitating job creation in three ways. First, it will create jobs related to the installation, operation and maintenance of the communications system. Second, it will facilitate the creation of jobs related to oil and gas exploration and production. Finally, the creation of additional oil and gas resources will benefit the economy generally and improve the United States' move towards independence from foreign oil and resources.^{17/} The Secretary of the Interior recently recognized the "importance of oil and gas drilling" in this region and noted that there is "extensive acreage that [the United States is] making available for lease in the Gulf of Mexico" for oil and gas exploration.^{18/} Investment in broadband communications projects in the Gulf of Mexico will, therefore, have a significant economic impact because broadband application providers and oil and gas providers, as well as the employees of those providers, will all benefit from the initial investment.

^{17/} Cain Burdeau, *Salazar Stresses Balance in Offshore Development*, ASSOCIATED PRESS, April 8, 2009 (reporting that in "2007, the Outer Continental Shelf accounted for 14 percent of the nation's natural gas production and 27 percent of its oil production. Salazar said the waters off the coast could produce much more of the nation's energy needs"); Michael Economides, *Lift offshore-drilling ban to jump-start economy*, HOUSTON CHRONICLE, Apr. 8, 2009 (calling on the U.S. government to lift current restrictions on off shore drilling because "offshore energy production has the potential to generate 1.2 million new jobs, \$8 trillion in additional economic output and \$2.2 trillion in extra tax receipts nationwide, according to a newly released study from the American Energy Alliance").

^{18/} Cain Burdeau, *Salazar Stresses Balance in Offshore Development*, ASSOCIATED PRESS, April 8, 2009.

In addition to facilitating economic development, NTIA should consider how a proposed grant can otherwise promote the public interest. For example, in Broadpoint's case, it can make capacity available on broadband networks to the Coast Guard and other federal agencies to help improve United States security. Innovative broadband communications services could be used by federal entities to increase the security of America's oil and gas rigs. The installation of advanced broadband communications services could also be employed for vessel tracking purposes. The vessel tracking services would be of invaluable assistance to the Coast Guard to assist in its patrolling responsibilities to keep the nation's borders safe.

Similarly, NTIA should consider other ways that a broadband grant would promote public health and safety. In Broadpoint's case, advanced communications systems could be used in potentially life-saving ways. Currently many workers on oil and gas production and exploration platforms cannot be treated for medical problems or emergencies and must be airlifted off the platforms to seek medical attention onshore. If medical issues arise after nightfall, the worker must wait until daybreak in order to be transported to shore. The installation of advanced broadband communications services could allow the provision of potentially life-saving telemedicine services, allowing platform personnel to communicate with hospitals onshore. Currently the expense of such services prohibits their wide deployment, but they are services that are needed on platforms across the Gulf.

A grant of broadband funding to Broadpoint would also promote the public interest by assisting in environmental protection. Broadband communications could be used to deploy advanced oil detection sensors that can immediately detect oil leaks before they are visible and notify the Coast Guard, oil provider, and other relevant entities concerning such leaks.

Accordingly, NTIA should evaluate all the public interest benefits that a broadband grant would confer.

Last, NTIA should ensure that BTOP funding is disseminated to projects that will be sustainable after the initial investment. While it is not necessary that grants be provided to incumbent communications providers only, NTIA must be sensitive to the ongoing costs of providing communications services, particularly in high-cost areas, such as the Gulf of Mexico. NTIA should look for potential grant applicants that have demonstrated a long-term financial commitment to the markets (both geographic and commercial) that they propose to serve. Entities like Broadpoint, have the expertise to continue the upkeep and provision of services. Thus, the provision of funding to entities like Broadpoint will surely return the government's initial investment through the economic and public benefits that will likely occur because of such investment.

E. Broadband Mapping Should Reflect Unserved Business Areas and Offshore Areas (Answer to Question 8)

NTIA should ensure that the development of its broadband maps reveals areas that are not attached to a specific census tract or postal code and should reflect offshore areas that are economic and business hubs. Specifically, such maps should reflect the Gulf of Mexico and the unserved businesses operating in the Gulf. Providing detailed information concerning the communications needs of such facilities will ensure that entities that wish to serve these businesses can apply for grants for the Gulf of Mexico region. This type of detail will ensure that the BTOP funds are accurately targeted at programs that will serve the economic areas most in need.

F. Demonstrations of Financial Need Should Take into Consideration the Cost of Implementing Service (Answer to Question 9)

NTIA asks about the factors that an applicant should be required to demonstrate in order to establish “financial need.” Particularly in the current economic climate, NTIA cannot rely on an entity’s mere inability to attract capital to support a claim of financial need -- that inability plagues most companies. Instead, NTIA should fund projects that would offer broadband services and otherwise serve the public interest but are otherwise not economically justifiable, even in better economic conditions. The provision of broadband services in the Gulf of Mexico is a prime example. Because of the harsh weather conditions and remote nature of sites in the Gulf of Mexico, the implementation of communications facilities in the Gulf is dramatically more costly than similar terrestrial systems. Most equipment is shipped via helicopter and, as noted above, can only be delivered during the day, in good conditions. These embedded costs make it difficult for entities like Broadpoint to offer services at marketplace rates. Yet, the need for broadband coverage that provides other public interest benefits remains strong and can be satisfied via BTOP grants.

G. NTIA Should Adopt Definitions that Reflect Industry Standards and Are Inclusive and Technologically-Neutral (Answer to Question 13)

Unserved/Underserved Areas. As discussed above, NTIA should not focus solely on the provision of service to residential, land-based end users when determining whether areas are unserved or underserved. A more appropriate approach would be to consider all end users, regardless of location and whether broadband is used for personal or business requirements. Moreover, NTIA should not rely solely on Census tract areas to determine unserved and underserved areas. Instead, it should focus on the needs of areas that may not fall within traditional Census mapping. NTIA should therefore consider an area without adequate

broadband services, despite an offshore location, as “underserved.” Applying a broader definition of “unserved” and “underserved” to encompass offshore business locations such as oil and gas rig platforms also reflects Congress’s intent to ensure that a variety of providers and services receive BTOP funding.^{19/} Moreover, ensuring that additional broadband communications facilities are deployed to burgeoning economic areas, wherever they are located, will satisfy Congress’s goal that BTOP funds are used for broadband deployment that “spur[s] job creation . . . [and] contribute[s] to economic growth.”^{20/}

Broadband Service. NTIA should ensure that its policies embody Congress’s directive that broadband service be defined in a technologically-neutral manner. Congress provided that grants should be awarded to any “recipient[] that will best achieve the broad objectives of the program” and those agencies distributing support funds should do so to any recipient they “judge[] will best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider, or any provider offering to construct last-mile, middle-mile, or long haul facilities.”^{21/} While Congress has directed that various forms of broadband be funded, NTIA should recognize that, at least in the Gulf of Mexico, it should first focus on funding projects that will deliver mobile/nomadic broadband access to end user devices. Mobility is a critical feature of the communications needs in the Gulf of Mexico and NTIA funding should first go to support those needs. As noted above, the D.C. Circuit Court of Appeals has recognized that the Gulf merits unique treatment with respect to its telecommunications requirements and NTIA should observe that judicial directive.^{22/}

^{19/} Conference Report at 774-775.

^{20/} *See Senators Urge Unserved Priority For ARRA Broadband Funds*, TR DAILY (Mar. 11, 2009).

^{21/} Conference Report at 774.

^{22/} *See supra* n.9.

Broadpoint and other entities serving the Gulf of Mexico are likely to do so via some form of wireless communications. Transmission speeds of wireless systems may not be the same as those of wired systems. Nevertheless, because Congress envisioned that BTOP funds would be used to support a variety of technologies, if NTIA establishes upload/download transmission speeds as an eligibility criteria, it should recognize the inherent difference in capabilities between broadband wireline and broadband wireless services.

NTIA should also adopt definitions of transmission speeds that are consistent with today's technology, so that a wide variety of potential applicants may be included in the grant program. A throughput of 2 Mbps from a carrier to customer premises equipment ("CPE") and throughput of 1 Mbps from CPE to a carrier should be the minimum speeds adopted for such services. Establishing this threshold ensures that wireless broadband services will truly provide next generation and innovative services to the benefit of end users. Offshore wireless broadband services should be required to demonstrate the same capabilities as terrestrial wireless broadband services. Similarly, NTIA should only fund offshore wireless broadband services that offer CPE that complies with industry standards and is compatible with terrestrial wireless broadband networks. As noted above, mobility is a critical feature of communications capacity in the Gulf. NTIA should principally fund programs that offer services that feature devices that can be used both terrestrially and in the Gulf, taking advantage of the roaming obligations that should be imposed on wireless broadband carriers that receive NTIA funding.

Nondiscrimination and Network Interconnection Obligations. NTIA should ensure that any entity which receives BTOP funding must agree to interconnection and roaming on reasonable, non-discriminatory terms and conditions. Interconnection rights provide competitive communications providers access to long distance access, PSTN interconnection, and Internet

backbone peering on reasonable, equitable, and non-discriminatory terms and at reasonable and non-discriminatory rates. Further, commercial roaming agreements are also critical to service providers, as recognized by the Commission, to ensure that their subscribers are able to operate their devices seamlessly.^{23/} For licensees without a national spectrum footprint, roaming is the only means by which they can offer the type of service that the FCC has recognized that both public safety users and consumers demand. However, new entrants' ability to secure widely available, commercially reasonable roaming agreements relies on the mercy of incumbent providers.^{24/} Thus, NTIA should ensure that entities taking BTOP funds are willing to provide interconnection and roaming. Doing so will ensure that the broader public interest -- of

^{23/} See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15828 ¶ 27 (2007).

^{24/} See, e.g., Comments of Leap Wireless International, Inc., WT Docket No. 05-265, at 13 (filed Nov. 28, 2005) (stating that “[l]arge carriers have demanded rates for automatic roaming that are on average nearly *four times* higher than the average revenue per minute the carrier received for comparable service, and nearly *seven times* what one carrier charged some of its affiliated carriers for the same service”) (emphasis in original); Comments of SouthernLINC Wireless, WT Docket No. 05-265, at 49-50 (filed Nov. 28, 2005) (reasonability of roaming rates should be judged by reference to lowest prevailing retail rates).

providing more telecommunications choices to businesses and consumers -- will be served.

Respectfully submitted,

/s/ Russell H. Fox

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