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FILE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Modification of Section 90.267 (b))
and Other Provisions of the)
FCC's Regulations Affecting the)
Ownership of Specialized Mobile)
Radio (SMR) Systems Within)
40 Miles of Each Other)

RM-8030

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OFFICE OF THE SECRETARY

To: The Commission

**STATEMENT IN OPPOSITION
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (API), by its attorneys, pursuant to Section 1.405(a) of the Rules and Regulations of the Federal Communications Commission (Commission), hereby respectfully submits this Statement in Opposition to the Petition for Rule Making filed by A & B Electronics, Inc. (A & B) on May 26, 1992.^{1/}

I. PRELIMINARY STATEMENT

1. The American Petroleum Institute is a national trade association representing over 200 companies involved in all aspects of the oil and natural gas industries,

^{1/} Public Notice, Report No. 1899, Petitions for Rulemaking Filed, released July 13, 1992.

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including exploration, production, refining, marketing and pipeline transportation of petroleum crude oil, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as a spokesperson before federal and state regulatory agencies and legislative bodies. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Transportation. The committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities employed in the oil and gas industries.

2. The Telecommunications Committee is API's primary committee concerned with telecommunications regulatory matters. It is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, two-way land mobile radio facilities in the Private Land Mobile Radio Services and point-to-point microwave systems in the Private Operational-Fixed Microwave Service. These telecommunications facilities are used to support the search for and production of oil and natural gas. These systems are also utilized to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, and for the processing and refining of these energy sources,

as well as for their ultimate delivery to industrial, commercial, and residential customers. The facilities licensed to API's members are thus essential to the provision of our nation's energy sources.

3. API's member companies are licensed to operate a vast array of two-way private land mobile radio systems utilizing frequencies in the 800 MHz and 900 MHz Industrial/Land Transportation, Business and General Category service pools to meet essential mobile radio telecommunications requirements. A & B's petition affects the future employment of this spectrum by API's member companies. Accordingly, API submits this Statement in Opposition to express its concern regarding A & B's proposals.

II. BACKGROUND

4. The 800 MHz and 900 MHz private land mobile radio systems operated by API's member companies employ, for the most part, channel pairs allocated to the Industrial/Land Transportation and Business categories. From API's perspective, the allocation of 800 MHz and 900 MHz channels to the four discrete service categories identified in Section 90.617 of the Commission's rules has

served to promote the fundamental public policy of ensuring that adequate channels are available to accommodate the needs of Industrial/Land Transportation and Business eligibles. As detailed below, the changes proposed by A & B have the potential to erode significantly the long-standing balance in frequencies allocated among the SMR, Industrial/Land Transportation and Business categories. API therefore finds that A & B's proposals will not serve the public interest.

III. STATEMENT IN OPPOSITION

5. API finds two facets of A & B's proposal to be particularly counterproductive: (1) the suggestion that any licensee which has been designated as a "system licensee" should be exempt from the 40-mile restriction set forth in Section 90.627(b), and (2) the suggestion that "aggregate loading" should be used as the basis for determining whether an existing licensee is eligible to acquire additional channels. Individually, each of these provisions is detrimental to the Commission's goal of fostering efficient use of the available private land mobile radio spectrum. Considered in tandem, the two proposals would eviscerate the beneficial role which the 40-mile rule has played in promoting efficient use of this spectrum.

6. A & B suggests that a designated system licensee should be able to gain access to additional channels in situations where the system licensee's assigned channels do not satisfy the 70 mobile unit per channel loading standard. A system licensee, by definition, will either have satisfied the 70 unit per channel loading standard at the station's first license renewal date or will have been exempt from that standard because the licensed station was located in an area that, as of the first renewal date, was not on the 800 MHz waiting list. In either case, there is no assurance that the system licensee's channels will be loaded efficiently at the time it seeks to acquire additional channels.

7. A & B's petition will provide an incentive for less efficient use of the available frequencies. System licensees will have no reason to limit the provision of interconnected service and will in many cases find themselves accommodating a smaller number of mobile units. If the adverse consequences of this proposal were confined solely to the SMR category channels, API would have few grounds for objecting. However, the negative effects of A & B's proposals would extend to all Industrial/Land

Transportation and Business eligibles having an interest in the continued availability of channels for their own use.

8. A & B states, on page 15 of its petition, that "intercategory channels [would] be available for SMR system licenses, only when there are no available SMR channels for licensing from the Commission within the relevant MSA or RSA." A & B makes no mention of the requirement, firmly imbedded in the existing intercategory sharing rules, that SMR systems must be "fully loaded" in order to qualify for intercategory channels. Presumably, A & B intends that system licensees would not have to be fully loaded in order to acquire channels through intercategory sharing.

9. The only restriction which A & B would impose on the ability of a system licensee to acquire intercategory channels is that the licensee could obtain a maximum of five channels more than it had constructed within a 40 mile radius. A & B apparently proposes this provision in order to provide some measure of restraint against possible channel hoarding or speculation in channels. API finds this approach to be both disingenuous and ineffective. Historically, the Commission's public policy with respect to use of the 800/900 MHz channels has been aimed at ensuring efficient use of the channels. The simple requirement that

channels be constructed, as a prerequisite for obtaining additional channels, is not an appropriate vehicle for either promoting or ensuring efficient use of the radio spectrum.

10. The proposed limitation on the number of channels that a system licensee may acquire will do nothing to ensure that the system licensee's channels are being put to efficient use. Channel loading provides a considerably more valid and meaningful measure of efficiency than would the proposed construction requirement. The approach suggested by A & B, premised on elimination of the requirement that applicants' systems be fully loaded, would remove the only meaningful prerequisite for the acquisition of intercategory channels by designated system licensees. For this reason, API strenuously opposes adoption of A & B's proposal to relax the 40-mile restriction for the so-called system licensees.

11. A & B's proposal to employ aggregate loading to determine whether a licensee qualifies for additional channels is similarly flawed. Effectively, this provision would encourage SMR licensees to locate multiple base stations at intervals on the perimeter of their service area and lay claim to additional channels without having

satisfied the 70 unit per channel loading requirement for any one station.

12. Under this aspect of A & B's proposal, SMR licensees who did not qualify for the designation of "system licensee" could nonetheless circumvent the requirement that stations be fully loaded before they are granted additional channel assignments. SMR licensees could license independent base stations on opposite sides of their 40-mile service area and, in effect, create two or more smaller systems that are virtually independent of one another. When the mobile loading on these systems reached a level of 70 units per channel in the aggregate, the licensee would qualify for additional channels. The net effect would simply be to dilute the existing channel loading standard. Spectrum efficiency would clearly be reduced. A greater proportion of SMR licensees could qualify for additional channels, including those channels available through intercategory sharing.

13. As with A & B's system licensee proposal, the aggregate loading proposal would inevitably exert additional, unwarranted pressure on the limited number of available Industrial/Land Transportation and Business category channels. There would be a dramatic increase in

the demand for channels available through the intercategory sharing provisions, but no comparable gain in spectrum efficiency. To the contrary, spectrum efficiency would diminish. The proposal would encourage SMR licensees to establish more transmitter sites, with each site accommodating the needs of a smaller number of end user units.

IV. CONCLUSION

14. API believes that the instant petition for rule making filed by A & B Electronics represents, simply and solely, a well-concealed effort to undermine one of the few remaining regulatory devices designed to ensure efficient use of the 800 MHz and 900 MHz private land mobile radio spectrum. Neither the proposed "system licensee" concept nor the "aggregate loading" provision would provide for more efficient use of the available spectrum.

15. To the contrary, these proposals would remove any meaningful requirement for SMR licensees to use their assigned frequencies efficiently. There would be a more pronounced emphasis on the provision of interconnected services by SMR licensees, resulting in service to a reduced number of end user mobile units. SMR licensees would gain

easier access to Industrial/Land Transportation and Business category channels, thereby reducing the number of channels available to accommodate the needs of Industrial/Land Transportation and Business eligibles. For these reasons, API disagrees strenuously with the measures proposed in A & B's petition.

WHEREFORE, THE PREMISES CONSIDERED, API opposes the Petition for Rule Making filed by A & B Electronics, Inc. and urges the Commission to act in accordance with the views expressed herein.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

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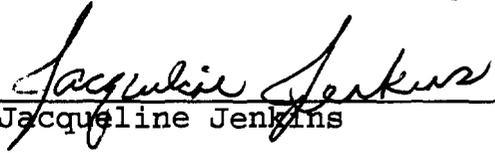
Its Attorneys

Dated: August 12, 1992

CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing Statement in Opposition has been sent via first class U.S. mail to the following on this 12th day of August, 1992:

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