

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections 3(n) )  
and 332 of the Communications Act )

GEN Docket No. 93-252 ✓

Regulatory Treatment of Mobile )  
Services )

To: The Commission

COMMENTS OF  
THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby submits these Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission on September 23, 1993 in the above-styled proceeding.<sup>1/</sup>

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as

<sup>1/</sup> Notice of Proposed Rule Making, 58 Fed. Reg. 53169 (October 14, 1993).

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spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. Reliable two-way land mobile radio is an essential tool in almost every phase of the oil and gas industries. Communications must be maintained during exploration activities for the direction of personnel and equipment, as well as for telemetering geophysical data. Drilling operations, by their very nature, involve hazards that can be minimized with reliable two-way radio communications. After production is established, mobile radio continues to play a critical role in providing communications for the management of production sites where careful supervision must be maintained over the operation of valves, pumps, compressors and separation equipment. Operation of the extensive pipeline gathering systems and long-distance, crude, petroleum products and natural gas pipelines would not be possible without reliable mobile radio communications. These same types of reliable communications are absolutely necessary in petroleum refineries where the safety of personnel demands clear channels of communication.

Even in the marketing and distribution of these energy sources, mobile radio continues to play an important role in the transfer of gas at city gates, and the loading and delivery by rail and tank trucks of refined petroleum products to industrial, commercial and residential customers.

3. The petroleum and natural gas industries were pioneers in the use of two-way mobile radio for industrial applications. In recent years, some two-way mobile radio communications have been served by other than the traditional private system. Even though use of private systems may be supplemented with cellular and Specialized Mobile Radio ("SMR") systems, where those services are available, there remains a very critical requirement for privately-owned and operated two-way mobile radio systems. These energy industries also expect to be users of new personal communications systems in areas where these services are ultimately offered. Notwithstanding the advent of these additional communication options, the oil and gas industries will continue to be large users of private land mobile radio systems for several reasons. First, public switched systems frequently become incapacitated during emergency conditions because of peak subscriber demand. Private systems are essential in these circumstances to insure the ongoing safe execution of energy operations where

hazardous conditions could develop without reliable communications. Moreover, private systems will continue to be needed in areas where there are inadequate or no public telecommunications facilities.

4. API appreciates the Commission's immediate response to Congress' recent enactment of the Omnibus Budget Reconciliation Act of 1993 which amended, among other provisions, Sections 3(n) and 332 of the Communications Act. The Congress left considerable discretion to the Commission, however, on how these new provisions will be implemented. API also appreciates the Congressional goal to "level the regulatory playing field" between providers of mobile radio services. API supports this fundamental goal, and applauds the Commission's effort to develop specific rules to achieve this goal in such a prompt manner.

5. API recognizes that there are certain private mobile services which provide services that are similar to some common carrier mobile services, but are not similarly regulated. API agrees that, in those instances, equal regulatory treatment between those carriers is a necessary step toward a truly competitive mobile radio service marketplace. API is pleased that the Commission proposes to classify all existing private, non-commercial services as Private Mobile Services which will not be subject to certain common carrier regulations that are to be applied to

Commercial Mobile Service providers. Nevertheless, API is concerned that its member companies' regulatory status as Private Mobile Service licensees could be altered if there are any misunderstandings on how these services are utilized. Specifically, API wishes to preserve the private regulatory status of two-way land mobile radio licensees who share their systems with other eligible users on both a non-profit and for-profit basis. Additionally, these systems must continue to have the capability of interconnecting with the Public Switched Telephone Network (PSTN) without being subject to the proposed common carrier regulations.

6. Most API members employ their private two-way mobile radio systems, which are frequently interconnected with the PSTN, solely for internal communication purposes. In instances where base stations or mobile relay equipment is shared, it is usually employed on a cost-shared or no charge basis. The occasional provision of service on a commercial, for-profit basis is so infrequent as to be de minimus. Accordingly, API is pleased to submit these brief Comments addressing these issues.

## II. COMMENTS

### A. **Private Carrier Status Must Be Maintained For Shared Two-Way Land Mobile Radio Systems**

7. One of the key terms requiring definition with respect to the Commercial Mobile Service (CMS) category is

"for-profit." The Commission requested comments on how the "for-profit" test should be applied to shared systems operating under the provisions of Part 90.<sup>2/</sup> The Notice indicated that the Commission would view systems as "not-for-profit" so long as the service is provided on a cost-shared basis, with no licensee obtaining a profit from the service. API supports application of Private Mobile Service for these non-profit, cost-shared systems. However, it opposes the implication that any profit gained from these sharing arrangements requires that the system be reclassified and regulated as a Commercial Mobile Service system.

8. The Commission is asked to consider that the vast majority of Petroleum Radio Service licensees use their systems solely for internal communications. Few, if any, of these systems are shared with other mobile radio users. Where sharing arrangements do exist in the Petroleum Radio Service, they are predominately on a non-profit, cost-sharing basis. As the Notice contemplates, these sharing arrangements are "not-for-profit," and fall outside of the definition of CMS. API supports this interpretation. Accordingly, API believes that two-way land mobile licensees who share their systems with other users on a non-profit,

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<sup>2/</sup> Notice at 4.

cost-sharing basis should maintain their regulatory status as Private Mobile Service licensees.

9. The API's Petroleum Frequency Coordinating Committee (PFCC) has not knowingly coordinated an application for a "for-profit" Petroleum Radio Service system within the last decade. Additionally, the PFCC's records contain no evidence of any for-profit sharing arrangements. If any for-profit sharing arrangements do exist in the Petroleum Radio Service, the number is so de minimis as to warrant no special consideration. It is respectfully submitted that Congress did not intend to reclassify these de minimus operations as commercial. To do so would serve no sound public policy objective. API submits that Congress' amendment to Section 3(n) to include therein mobile services "licensed on a cooperative or multiple basis"<sup>3/</sup> contemplated community repeater systems, and not two-way private land mobile systems used primarily for a single user's internal communications. Therefore, API strongly urges the Commission not to apply commercial classification to limited for-profit sharing arrangements.

10. API suggests the Commission may find instructive its own proposed definition of Non-Commercial Radio Service as described in the "spectrum refarming" proceeding, PR

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<sup>3/</sup> 47 U.S.C. Section 153(n) (2).

Docket No. 92-235.<sup>4/</sup> There, the Commission proposed that eligibility for the Non-Commercial Radio Service be open to "entities seeking to operate a system for the licensee's internal use."<sup>5/</sup> Multiple licensing, i.e., for community repeater systems, would not be allowed in the Non-Commercial Radio Service although limited selling of excess capacity would be permitted.<sup>6/</sup> The proposed Part 88 rules elaborated on this issue by providing that ". . . [a] licensee in the Non-Commercial Radio Service operating a system for its own internal use may lease excess capacity, provided that at least 50 percent of the mobiles on that system are for [the] licensee's own use. . . ."<sup>7/</sup> API believes that this type of approach should be carefully examined in this proceeding. Since Congress gave the Commission discretion to promulgate rules to enforce its amendments to Sections 3(n) and 332 of the Act, API urges the Commission to allow two-way land mobile radio licensees to maintain their private carrier status where at least 50% of the mobile units are used for

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<sup>4/</sup> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Notice of Proposed Rule Making, 57 Fed. Reg. 51034 (November 16, 1992) (Refarming NPRM).

<sup>5/</sup> Refarming NPRM at Appendix A, p. 21.

<sup>6/</sup> Id. at p. 22.

<sup>7/</sup> Id. at Appendix D, Section 88.15(c), p. 58 (Emphasis added).

the licensees' internal communications even though the excess system capacity is made available to others either on a non-profit or for-profit basis.

**B. Private Carrier Status Must Be Maintained For Private Two-Way Mobile Radio Systems That Interconnect With The Public Switched Telephone Network**

11. Many Petroleum Radio Service licensees conduct operations in remote areas, both on-shore and offshore where access to the PSTN is not readily available. These licensees must have the capability of interconnecting with the PSTN via their mobile units so that personnel can summon emergency assistance or communicate with vendors and suppliers for equipments and materials. Because these private system licensees do not have mobile radio subscribers, there is no risk that such subscribers could have direct or indirect access to the PSTN.

**III. CONCLUSION**

12. API is pleased that the Commission has proposed to classify existing private, non-commercial services as Private Mobile Services. The Commission is urged not to fracture the traditional private service simply because some system may be shared on a non-profit basis and, fewer, if any, on a for-profit basis. The Commission is urged to preserve a private licensee's right to share its excess capacity on a for-profit or not-for-profit basis, as

currently permitted under Section 90.179 of the FCC's Rules and Regulations. API also wishes to preserve private land mobile licensees' right to interconnect their systems with the PSTN for service unrelated to subscription message services, as permitted under Section 90.477 of the rules.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to proceed in this matter in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM INSTITUTE**

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