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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
 Implementation of Sections)
 (3) and 332 of the)
 Communications Act)
)
 Regulatory Treatment of)
 Mobile Services)

GN Docket No. 93-252

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JUL 1 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, hereby respectfully submits these Reply Comments regarding the Comments of other interested parties filed in response to the Further Notice of Proposed Rule Making ("FNPRM") adopted by the Federal Communications Commission ("FCC or Commission") on April 20, 1994, in the above-styled proceeding.^{1/}

I. PRELIMINARY STATEMENT

1. As discussed in greater detail in its Comments filed in this matter on June 20, 1994, API's interest in this proceeding relates primarily to three principle issues. First, due to the unusually short period provided for

^{1/} 59 Fed. Reg. 28042 (May 31, 1994).

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resolution of the complex issues examined in this proceeding and the absence of an appendix setting forth the text of proposed rules, API emphasizes the underlying need for exercising great care in this transition so as to avoid the implementation of unsuitably tailored regulations. Second, API asked the Commission to refrain from modifying Part 90 of the Rules and Regulations, except where absolutely essential, in order to avoid any unintended impact on PMRS systems. Finally, API strongly recommended that the existing permissible communications rules not be altered insofar as Private Land Mobile Radio Service ("PMRS") systems are concerned.

2. API has reviewed and strongly supports the views expressed in the Comments of the Industrial Telecommunications Association, Inc. ("ITA") and the Utilities Telecommunications Council ("UTC"). API opposes the mandatory aspects of Nextel Communications, Inc.'s ("Nextel") wide-area licensing proposal.^{2/} API is also opposed to the proposal of the National Association of Business and Educational Radio, Inc. ("NABER") that licensees in the band 861-865 MHz who refuse to move from the band 856-860 MHz when a "sincere" offer has been made by

^{2/} Nextel Comments at 19.

a wide-area licensee -- be subject to a lower level of license renewal expectancy.^{3/}

3. The purpose of the FNPRM is to further modify the recently created rules^{4/} governing the regulatory treatment of mobile service providers. The FCC seeks in the current phase of this proceeding to ensure that regulations are promulgated which support Congress' view of how mobile service providers should be regulated.^{5/}

4. API members operate extensive, private two-way mobile radio systems that are used to provide internal communications. While API appreciates that the FCC must establish regulations which meet Congressional directives for the governance of Commercial Mobile Radio Service ("CMRS") systems, API cautions that any new CMRS rules should not, purposefully or inadvertently, impinge on the use of any PMRS systems.

^{3/} NABER Comments at 16-17.

^{4/} Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd. 1411 (1994), erratum, Mimeo No. 92486 (Released: March 30, 1994) ("Second Report and Order").

^{5/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

II. REPLY COMMENTS

A. **CMRS Provisions of the Budget Act Must Be Implemented In An Orderly Fashion**

5. API agrees with the FCC's statement that implementation of the new CMRS rules must be carefully considered and orderly.^{6/} The Commission's deadline of August 10, 1994 to make changes to the existing service rules is rapidly approaching and may cause the unintentional implementation of unsuitably tailored regulations. Likewise, the absence of an appendix setting forth the proposed rules, coupled with the short comment period, exacerbates the potential for error. Second, API recognizes that, without an orderly transition, incidents could arise where PMRS systems are held liable for regulations which should only apply to CMRS systems. Third, API is concerned that the proposed "Application for Mobile Radio Service Authorization," with its six separate schedules, may prove to be an unnecessarily complex document for many PMRS licensing requirements. ITA and UTC share similar concerns.^{7/} PMRS applicants should not be burdened with

^{6/} FNPRM at ¶4.

^{7/} Comments of ITA at 8-9; Comments of UTC at 4-5.

deciphering pages of the unified CMRS and PMRS application which do not apply to them and which may cause confusion and filing errors. To prevent PMRS applicants from unnecessarily filling out non-applicable portions of the application, API strongly recommends that the FCC clearly label all sections of the application which do not apply to PMRS.

B. The Commission Must Refrain from Modifying Part 90 of the Rules, Where Possible, to Avoid Unintended Ill Effects in PMRS Systems

6. API is concerned that the abbreviated schedule for this proceeding, coupled with its complex nature, could result in the implementation of poorly drafted rules and thus unintended consequences. API encourages the FCC to forego any general amendment of Part 90 regulations in favor of well-considered, surgical Part 90 amendments which only provide for the regulation of CMRS systems. Relatedly, API believes that all elements of the spectrum refarming proceeding^{8/} should proceed independent of the instant matter and be kept separate from the CMRS transition.

^{8/} PR Docket No. 92-235.

C. The Rules Relating to Permissible Communications on non-CMRS Private Radio Systems Remain Relevant and Should Not Be Revisited

7. In the FNPRM, the FCC questioned whether the rules relating to permissible communications are still relevant under the new mobile services regulatory regime.^{9/} API urges the Commission to forego revising the permissible communications rules which apply to PMRS systems. In 1984, the FCC considered elimination of the permissible communications rules for the Private Land Mobile Radio Services.^{10/} The vast majority of commentors in that proceeding opposed the elimination, and the FCC left the underlying provisions intact.^{11/}

8. A significant difference between the PMRS and CMRS is that the former share spectrum on a co-channel basis and the latter generally provide service on exclusive channel assignments. It is therefore critical that permissible

^{9/} FNPRM at ¶ 79.

^{10/} Amendment of the Commission's Rules to Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services, Notice of Proposed Rule Making, 49 Fed.Reg. 10560, (PR Docket No. 84-109) (March 21, 1984).

^{11/} See Amendment of the Commission's Rules to Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services, Report and Order, 50 Fed.Reg. 6179, (PR Docket No. 84-109) (February 14, 1985).

communication rules for the increasingly congested PMRS generally limit communications to those related to safety of life and property, and the activities that form the basis for the licensee's eligibility.

D. API Opposes the Mandatory Aspect of the Nextel Wide-Area Licensing Proposal.

9. In its Comments, Nextel proposed establishing an ESMR spectrum block and "retuning" traditional SMRS to operate on non-ESMR block channels.^{12/} In particular, Nextel suggested that the FCC allocate channels 401-600 of the band 861-865 MHz for exclusive use by ESMR licensees and authorize their use on an MTA basis.^{13/} Incumbent SMR licensees would be moved, at the ESMR's expense, to channels presumably held by the ESMR in the band 856-860 MHz.^{14/} If the EMSR and the incumbent licensee fail to reach an agreement, Nextel proposed that the FCC impose a "mandatory retuning process."^{15/}

^{12/} Comments of Nextel at 11.

^{13/} Id. at 11-18.

^{14/} Id. at 19.

^{15/} Id.

10. API is concerned that should an ESMR not have control over a sufficient number of channels in the band 856-86 MHz to which traditional SMRs can be returned, it will look for unassigned Industrial/Land Transportation and Business Category Channels to accommodate the traditional SMR. To the extent that there are any Industrial/Land Transportation and Business Category channels left unassigned, they clearly must be reserved for the originally-intended eligible users.

E. API Opposes the NABER Proposal That Licensees in the Band 861/865 MHz Who Refuse to Move to the Band 856/860 MHz May be Subject to a Lower Level of License Renewal Expectancy.

11. NABER opposes Nextel's proposal that the move from 861-865 MHz to 856-860 MHz must be mandatory.^{16/} Yet, NABER frets that situations may occur where the incumbent licensee refuses to move "despite the presence of sufficient spectrum and the sincere efforts of the wide area licensee(s)."^{17/} NABER notes that the recalcitrant incumbent licensee, whom normally enjoys a substantial license renewal expectancy, should be found by the Commission to have a lowered renewal

^{16/} Comments of NABER at 16.

^{17/} Id.

expectancy or, in some cases, not be entitled to a renewal expectancy at all when the existing license expires.^{18/}

12. API opposes any effort to reduce the presumption of renewal expectancy. The diminished renewal expectancy concept is alien to the current licensing process and upsets the precedent that licensees whom operate within existing standards are entitled to a presumption of renewal. No operator, after making the considerable investment in equipment, should be subject to the uncertainty of license revocation under these bizarre circumstances.

III. CONCLUSION

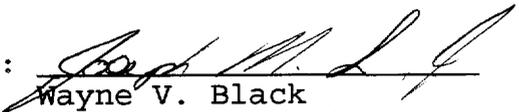
13. Due to the unusually short deadline in this proceeding and the absence of an appendix setting forth proposed rule text, API re-emphasizes the absolute need for the exercise of care in this regulatory transition in order to avoid the implementation of inappropriate regulations. API also requests that the Commission refrain from modifying Part 90 of the rules, unless it is absolutely necessary, so as to avoid unintended ill effects on PMRS systems. API strongly recommends that the existing permissible

^{18/} Id. at 16-17.

communications rules not be altered insofar as their PMRS application is concerned. Finally, API opposes the mandatory aspects of Nextel Communications, Inc.'s ("Nextel") wide-area licensing proposal. API also opposes the National Association of Business and Educational Radio, Inc. ("NABER") proposal that licensees in the band 861/865 MHz -- who refuse to move to the band 856/860 MHz when a "sincere" offer has been made by a wide-area licensee -- be subject to a diminished license renewal expectancy.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,
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