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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In The Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
and		
Implementation of Section 309(j) of the Communications Act Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys, hereby respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Federal Communications Commission ("FCC or Commission") on October 20, 1994 in the above-styled proceeding.[1/]

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

[1/] 59 Fed. Reg. 60111 (November 22, 1994).

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many activities, API acts on behalf of its members as 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. Many petroleum and natural gas companies employ facilities authorized to use channels from the bands above 806 MHz and may be affected by the measures proposed in the Further Notice.

2. The purpose of the Further Notice is to solicit comments on how the FCC should implement a new framework for licensing and operation of Specialized Mobile Radio ("SMR") systems employing channel assignments from the 800 MHz band. Although of primary interest to the SMR community, the proposals described in the Further Notice also affect 800 MHz private system users. Generally, the FCC has proposed to: (1) split the 800 MHz SMR band into an "upper block" of 200 channels primarily for use by wide-area SMRs on a Major Trading Area ("MTA") basis,[2/] and a "lower

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[2/] Rand McNally & Company organized the entire United States into 47 MTAs and 487 Basic Trading Areas ("BTAs"). This organization was used by the FCC to structure the service areas for Personal Communications Services ("PCS") technology.

block" of 80 channels primarily for local systems; and (2) accommodate SMR interests while protecting Private Land Mobile Radio Service ("PLMRS") interests in the Industrial/Land Transportation and Business Pool ("Pool"), and General Category channels.

3. The FCC seeks to treat wide-area SMRs in the same fashion as similar Commercial Mobile Radio Service ("CMRS") providers in order to meet the Congressional mandate for regulatory parity for all CMRS providers. The Third Report and Order,[3/] released by the FCC on September 23, 1994 in the Docket No. 93-252 matter, was adopted in response to requirements imposed by the Omnibus Budget Reconciliation Act of 1993[4/] that the FCC implement changes to its technical, operational and licensing rules to establish regulatory symmetry among similar CMRS providers. In that Third Report and Order, the FCC stated that 800 MHz SMRs compete, or have the potential to compete, with wide-area CMRS providers, but that the interests of small SMRs need to be considered.[5/] Accordingly, the FCC proposed in the

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[3/] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, (Adopted: August 9, 1994).

[4/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 317, 392 (1993). ("Budget Act").

[5/] Third Report and Order at 55.

Further Notice rules to implement regulatory parity while meeting the needs of small SMR systems and affected Part 90 users. It has, however, sought a substantial amount of input from Commentors because of the broad effect such rules will have on existing systems.

4. API is interested in the Further Notice because of three principal factors. First, API believes that the Commission should foreclose future SMR licensing on Pool and General Category channels.[6] Secondly, API opposes any mandatory relocation of incumbents from the upper block of spectrum. Finally, API requests that, if mandatory relocation is ordered, relocated licensees be placed on equivalent channel assignments and that all their equipment modification, administrative, and personnel costs be covered by the MTA licensee. Additionally, it is submitted that there should be payment to incumbents of a "premium" to cover the inconvenience caused those licensees required to relocate their systems.

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[6] Subpart S of Part 90 of the FCC's rules outlines which General Category and Pool Channels are available for sharing. The authorization for intercategory sharing is provided in 47 C.F.R. § 90.621(g)(2).

II. COMMENTS

A. Future SMR Licensing on Pool and General Category Channels Must Be Eliminated

5. API has been troubled for several years about the encroachment of SMRs into the Pool and General Category channels. This is due to the concern that the expanding SMR industry will exhaust the supply of 800 MHz spectrum available to oil and gas applicants who are primarily eligible to use the Pool channels. The FCC has reflected a similar concern, noting that, because these channels are also available for private and public safety uses, and not subject to auction, SMR users could invade and devour the spectrum supply while avoiding auctions.[7] There are 280 channels dedicated for SMR use, and it is respectfully submitted that this amount of spectrum from this band should be sufficient for commercial use.

6. The FCC stated in the Further Notice that existing SMR operations on Pool and General Category channels should not be disrupted, but that "some restriction" should be placed on further expansion.[8] At a minimum, should the

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[7] Id.

[8] Further Notice at 30. [Frequencies in the 806-809.750/851-854.750 MHz bands (Channels 1-150) are allocated to the General Category for conventional operations. 47 C.F.R. § 90.615(a). Frequencies in the 806-821/851-866 MHz bands are available for intercategory sharing under specified conditions. 47 C.F.R. § 90.621(g)(2) & (3).]

FCC decide not to fully eliminate future licensing of SMR facilities on the Pool and General Category channels, it should designate no more than 10% of the General Category channels for SMR-only use. The Pool channels and remaining General Category channels should be earmarked for private and public safety use. By no means should the FCC designate all of the General Category channels solely for SMR use.

B. There Should Be *No* Mandatory Relocation of Incumbents From Channels 401-600 and Remaining Incumbents Must Be Protected From Interference

7. In the Further Notice, the FCC proposed to designate 10 MHz of contiguous SMR spectrum, channels 401-600, in the 800 MHz band for licensing in four 2.5 MHz blocks per MTA.

(1) Relocation Plan

8. The FCC stated that it wished to avoid mandatory relocation of incumbents presently operating in the MTA blocks.[9] Instead, the FCC seeks to provide inducements to facilitate voluntary relocation. However, the Further Notice plan does contain a mandatory relocation clause if voluntary relocation fails. The proposed plan is to:

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[9] Further Notice at 21.

> [E]stablish an initial period (e.g., two years) for MTA licensees and incumbent systems to negotiate voluntary relocation agreements. After the expiration of this two-year period, an MTA licensee would be able to initiate a one-year mandatory period regarding relocation terms upon written request to the incumbent licensee for the channel on which it is operating. During this period, both the MTA licensee and the incumbent licensee would be required to negotiate in good faith. If no agreement was reached by the end of this one-year period, the MTA licensee would then be able to request mandatory relocation of the incumbent, provided it would (1) demonstrate the availability of fully comparable alternate frequencies, (2) guarantee payment of all relocation expenses, including all engineering, equipment, site, and regulatory fees, as well as any reasonable additional costs that the relocated licensee may incur, and (3) construct new SMR facilities, if necessary, and test them for comparability to the existing system. (Emphasis supplied).[10]

The plan thus effectively imposes a mandatory incumbent relocation policy after three years have expired. API opposes this mandatory relocation plan due to its disruptive nature and because wide-area SMR systems are fully capable of operating throughout most of the United States without forcing the relocation of those incumbents who do not wish to accept a voluntary relocation offer.

(2) Co-Channel Interference and Expansion

9. The FCC proposed to place existing CMRS co-channel interference obligations on MTA licensees to

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[10] Further Notice at 22-23.

avoid disruption of incumbent SMR systems and those of adjacent MTA licensees. MTA licensees must shield incumbents by adhering to the standard provided in Section 90.621(b) of the FCC's rules. API fully supports continuation of these co-channel interference standards.

10. The FCC further proposed to allow incumbent SMRs to construct stations anywhere within a defined, protected service area. The proposed protected service area would have a 30 kilometer radius within which the incumbent may improve its quality of service by installing low power "fill-in" base stations.[11] This ability to "fill in" a defined service area should apply to all incumbents in the upper block, including the few remaining private trunked systems.

C. If Mandatory Relocation Occurs, Relocated Licensees Must Be Accommodated With Equivalent Facilities and Fairly Compensated For All Costs Related to the Move, Including a "Premium" Payment

11. API member companies remain profoundly concerned about the loss of fixed allocations at 1.8 GHz and 2.1 GHz in the PCS proceedings through mandatory relocation.[12] Now, private licensees are being told once again to "move or

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[11] Further Notice at 24-25.

[12] API has participated in nearly every phase of the General Docket No. 90-314 PCS proceeding and its concerns are well documented.

else." Ostensibly, the move would be to a comparable spectrum location and incumbents would be compensated for their actual moving costs.

12. These reallocations can cause tremendous upheaval, drain resources, and engender substantial consternation. Moreover, many of the more unsavory elements which accompany such a move often cannot be neatly itemized on a billing sheet. Therefore, API strongly advocates that incumbents forced to move from the upper block be granted a "premium" payment over and above all other identifiable costs associated with moving the incumbent to different channel assignments. This premium payment should, at a minimum, equal or exceed 15% of the total cost of the move.

III. CONCLUSION

13. Future SMR licensing on Business, and Industrial/Land Transportation "Pool" and General Category channels should be prohibited because it would deny scarce spectrum to private radio users and circumvent the competitive bidding process. Mandatory relocation of incumbents from the upper block of spectrum is unnecessary due to the small number of incumbents who will remain after voluntary relocation is implemented. Thirdly, API requests that if mandatory relocation is to occur, relocated licensees must be placed in equivalent spectrum and all

their equipment modification, administrative, and personnel costs be covered by the MTA licensee, including a "premium" payment.

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

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

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