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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In The Matter of)
)
Amendment of the Commission's)
Rules Regarding Multiple Address)
Systems)

WT Docket No. 97-81

To: The Commission

REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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SUMMARY

The record in this proceeding clearly shows that the Federal Communications Commission's ("Commission") proposed licensing scheme for Multiple Address System ("MAS") channels is inadequate to meet the substantial and growing demand of petroleum and natural gas companies, electric utilities, railroads and other entities for MAS spectrum to meet important internal communications requirements. The Commission explicitly recognized this unmet demand when it originally decided to make new MAS spectrum available in the band 932/941 MHz. To fulfill its long-standing promise to ease this private MAS spectrum shortage, the Commission must not only create a purely private allocation in the already-congested 928/952/956 MHz bands, but must also set aside for private use a number of channels in the 932/941 MHz MAS band.

The record also shows that geographic licensing is incompatible with private MAS spectrum use. Accordingly, the Commission should retain the more spectrum-efficient site-by-site licensing approach for private MAS channels and should not allow subscriber-based licensees in the 928/952/956 MHz MAS bands to hoard MAS spectrum by converting their existing site-by-site licenses into

geographic licenses. Finally, the Commission should not allow mobile operations in the MAS bands on a co-equal basis with MAS operations. Unless highly regulated, mobile operations on MAS channels will create an unacceptable risk of interference to fixed operations.

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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Reply Comments regarding Comments filed by other participants in response to the Commission's Notice of Proposed Rule Making ("Notice")^{1/} in the above-referenced proceeding. The Notice proposed new rules for the allocation, licensing and operation of Multiple Address System ("MAS") channels.

^{1/} 62 Fed. Reg. 11407 (March 12, 1997). The deadline for filing Reply Comments was extended from May 6, 1997, to May 16, 1997 by Order of the Commission dated April 18, 1997 (DA 97-839).

I. REPLY COMMENTS

1. API's Comments urged the Commission to accommodate the critical and long-standing MAS requirements of private licensees by: (1) setting aside twenty MAS channels in the 932/941 MHz MAS band for private use; (2) designating any available spectrum in the 928/952/956 MHz and 928/959 MHz MAS bands for private use and initiating efforts to ensure that existing licensees in these bands comply with the Commission's construction requirements; and (3) continuing to license private MAS channels on a site-by-site basis. As discussed below, many of the Comments filed in this proceeding by other parties provide additional support for API's positions, while none presents any meritorious opposition. API also agrees with a number of commenters that mobile operations should not be permitted on a co-primary basis in any of the MAS bands.

A. The Commission Must Not Ignore the Large Unmet Demand for Private MAS Channels

2. The Comments that have been filed in this docket demonstrate the many ways in which MAS channels are used to meet the internal communications requirements of a wide variety of businesses, including petroleum and natural gas

production and pipelines, utilities and railroads.^{2/} In many instances, these private MAS channels serve important public safety and environmental functions.^{3/} Armed with evidence of a growing demand for private MAS spectrum, the vast majority of commenters to address the issue expressed strong support for the Commission's proposal to designate available channels in the 928/952/956 MHz MAS bands purely for private use.^{4/}

^{2/} See, e.g., Comments of Southern California Edison Company ("Edison") at 1-2; Comments of Puget Sound Energy, Inc. ("PSE") at 2-3; Comments of Public Service Company of New Mexico ("PNM") at 1; Comments of Delmarva Power & Light ("Delmarva") at 1-2; Comments of Cooperative Power Association ("Cooperative Power") at 1-2; Comments of Burlington Northern and Santa Fe Railway Company and Norfolk Southern Corporation ("BNSF and NS") at 2; Comments of UTC, The Telecommunications Association ("UTC") at 1-16; Comments of Affiliated American Railroads at 1-2; Comments of Wells Rural Electric Company ("Wells Rural") at 1-2; Comments of GPM Gas Corporation ("GPM") at 1-3; Comments of Colorado Interstate Gas Company ("CIG") at 1; Comments of API at 3-4.

^{3/} See, e.g., Comments of GPM at 2; Comments of CIG at 1; Comments of PNM at 1; Comments of PSE at 2; Comments of Delmarva at 1; Comments of UTC at 3-4; Comments of Cooperative Power at 1-2; Comments of BNSF and NS at 2; Comments of Affiliated American Railroads at 1; Comments of Wells Rural at 1-2; Comments of API at 3-4.

^{4/} See Comments of Microwave Data Systems ("MDS") at 7; Comments of Edison at 2-3; Comments of PSE at 3; Comments of PNM at 1-2; Comments of GTECH Corporation ("GTECH") at 3-4; Comments of Delmarva at 2-3; Comments of Sensus Technologies, Inc. ("Sensus") at 3-4; Comments of Cooperative Power at 3-4; Comments of BNSF and NS at 4; Comments of UTC at 16-18; Comments of Affiliated American Railroads at 2-3; Comments of Wells Rural at 2-3; Comments of GPM at 5; Comments of API at 5-9.

3. By contrast, only two commenters have argued that these bands should continue to be available for subscriber-based or private carrier services (such as alarm monitoring or meter reading systems). Comments of Radscan, Inc. ("Radscan") at 6; Comments of Itron, Inc. ("Itron") at 3. To the extent that parties such as Itron and Radscan are incumbent licensees in the 928/952/956 MHz MAS bands, their existing operations will be protected by the Commission's grandfathering provisions, and no costly or disruptive relocations will be required. API believes, however, that any future demand for commercial MAS channels should be accommodated in the 932/941 MHz MAS band.^{5/} Given the highly congested nature of the 928/952/956 MHz bands (as Radscan acknowledged in its Comments^{6/}), it is unlikely that parties such as Itron and Radscan will be able to satisfy all of their future MAS needs from these bands. Accordingly, these parties -- like private users of MAS spectrum -- will ultimately need to adapt their operations to new MAS frequencies. Allowing commercial entities to continue utilizing the 928/952/956 MHz MAS bands would only encourage the speculative licensing of the few available

^{5/} Under API's proposal, 15 channels in this band would be made available exclusively for subscriber-based services.

^{6/} Comments of Radscan at 12.

channels,^{2/} thereby further depleting the MAS spectrum available for private use and undermining the Commission's proposal to auction commercial MAS channels in other bands.

4. API also disagrees with Radscan's suggestion that private MAS needs can be accommodated through the purchase of service from commercial providers or the acquisition of partitioned or disaggregated MAS spectrum. See Comments of Radscan at 14. As private spectrum users have explained on many occasions, commercial services frequently are an inadequate substitute for private channels; only the latter afford licensees the requisite level of control over communications networks that are vital to their operations and the flexibility to tailor their systems to their individual needs. Further, commercial systems often do not serve the remote areas in which the operations of API's member companies and other private users take place. Likewise, there is no guarantee that partitioned or disaggregated MAS licenses meeting the particular needs of private licensees will become available. Nor is it clear that private licensees, lacking a profit motive for the

^{2/} Even if Radscan is correct that the 928/952/956 MHz MAS bands are of no use to commercial parties that do not already operate in these bands, there would, under Radscan's proposal, be nothing to prevent such parties from licensing available channels and attempting to sell them at a profit to existing licensees such as Radscan (in an effort, perhaps, to defray the costs of purchasing MAS licenses at auction).

purchase of MAS licenses, would be able to offer enough money to compel auction winners to part with some of their license rights.^{8/}

5. Of even greater importance than the future allocation of the 928/952/956 MHz MAS bands is the assignment of 932/941 MHz MAS channels. It is undisputed that the 928/952/956 MHz MAS bands are highly saturated in many areas.^{9/} In fact, it is for this reason that the Commission initially allocated new spectrum in the 932/941 MHz band for MAS use.^{10/} Having expended time and money in applying for assignments from this band and then waited five years for the Commission's promise of new MAS spectrum to

^{8/} The new rules proposed by the Commission do not even appear to allow private licensees to purchase partitioned or disaggregated licenses in the bands that the Commission intends to designate for subscriber-based services.

^{9/} See Comments of MDS at 7; Comments of PNM at 2; Comments of GPM at 3-4; Comments of Black & Associates at 3; Comments of UTC at 17; Comments of Radscan at 12 (and attached "Engineering Statement of Sydney T. Black"); Comments of API at 23-25.

^{10/} See Comments of API at 14-15.

become a reality,^{11/} private users now are told that they will not be eligible for any of these channels.

6. The Commission's purported rationale for its proposal to exclude private licensees from the 932/941 MHz MAS band -- i.e., that over 95% of the pending applications "were filed by entities seemingly proposing to use their licenses principally to provide subscriber-based services"^{12/} -- does not find support in any of the Comments filed in this proceeding. Rather, the Comments show that there is strong demand among private MAS users for new channels in the 932/941 MHz MAS band and that some form of access to these channels by private users (e.g., a

^{11/} API takes issue with ProNet Inc.'s contention that the parties who filed applications for assignments from the 932/941 MHz MAS band "apparently" have made "little effort" to obtain action on these applications. Comments of ProNet Inc. at 5 n.8. Nothing could be further from the truth. Many of API's members, either directly or through their counsel, have made repeated inquiries to the Commission over the past five years regarding the status of the pending applications. Additionally, API (through its counsel) submitted a letter to the Chief of the Wireless Telecommunications Bureau on June 11, 1996 in which it requested that the Commission promptly take action on these applications. UTC submitted a similar letter to the Chairman of the Commission on December 23, 1994 and filed a Petition for Writ of Mandamus in the United States Court of Appeals for the District of Columbia Circuit in January 1997 to compel the Commission to act on the applications.

^{12/} Notice at ¶ 10.

non-auctionable private set-aside) therefore is warranted.^{13/} These conclusions are consistent with the past and current uses of MAS spectrum, in that "to date, the majority of MAS operations provide internal service." Comments of the Alarm Industry Communications Committee ("AICC") at 10. If the Commission is to fulfill its duty to make spectrum allocation decisions in the public interest, it may not simply ignore the wealth of unrefuted evidence that private users, equipment manufacturers and other parties have presented regarding this important matter.

B. Geographic Licensing is Incompatible With Private MAS Uses and Should Not be Employed in the 928/952/956 MHz MAS Bands

7. The Comments filed in this proceeding overwhelmingly support the retention of the existing site-by-site licensing approach for private MAS channels.^{14/}

^{13/} See Comments of MDS at 2-6; Comments of UTC at 18-26; Comments of PSE at 4-5; Comments of PNM at 2; Comments of GTECH at 4-6; Comments of Alligator Communications, Inc. at 4-5; Comments of Black & Associates at 4-5; Comments of GPM at 5-6; Comments of CIG at 2-3; Comments of API at 23-28.

^{14/} See Comments of MDS at 8-8; Comments of Edison at 3-6; Comments of PSE at 3; Comments of PNM at 2; Comments of GTECH at 6; Comments of Black & Associates at 6-7; Comments of Delmarva at 4-5; Comments of Sensus at 5; Comments of Cooperative Power at 4-5; Comments of BNSF and NS at 4-6; Comments of UTC at 27; Comments of Affiliated American Railroads at 3-4; Comments of Wells Rural at 3-4; Comments

(continued...)

Because the operations of private licensees typically do not coincide with the boundaries of geographic market-based service areas, requiring private licensees to acquire geographic area licenses would not be an efficient use of scarce MAS spectrum. Site-by-site licensing, on the other hand, enables licensees to obtain only that amount of spectrum necessary to serve the particular areas of their operations and, as a result, leaves undesired nearby sites available for licensing by other parties.

8. As a related matter, API strongly opposes Radscan's proposal that subscriber-based licensees in the 928/952/956 MHz MAS bands be permitted to convert their existing site-by-site licenses to geographic Economic Area ("EA") licenses. Comments of Radscan at 18. To begin with, API believes that this proposal is essentially an attempt to make an end run around the Commission's tentative conclusion that available channels in these bands should be designated exclusively for private MAS services. As discussed above and in a great number of the Comments filed in this proceeding, there are compelling reasons for establishing a purely private allocation in the 928/952/956 MHz bands. Adopting Radscan's proposal regarding EA licensing would

¹⁴(...continued)

of GPM at 9; Comments of Itron at 3-4; Comments of API at 30-33.

enable incumbent subscriber-based licensees in these bands to usurp a substantial amount of what little spectrum remains available for use by private licensees.^{15/}

9. Particularly objectionable is Radscan's suggestion that following the conversion of one or more subscriber-based licenses in the 928/952/956 MHz MAS bands to an EA, "[a]ny incumbent internal, private-use licensees on the same channels within the same EA would, at the option of the new EA licensee, be grandfathered or relocated to other MAS channels at the EA licensee's expense." Comments of Radscan at 20 (emphasis added). While Radscan complains at length about the disruption that it claims would result if it were required to relocate its own systems to other MAS spectrum (see Comments of Radscan at 9-10), it apparently would not hesitate to impose such disruptive relocations upon the critical operations of private licensees. Moreover, Radscan fails to explain what spectrum would be available for such relocations, given the existing level of saturation in the 928/952/956 MHz MAS bands and the fact that the Commission

^{15/} The Commission also should reject Radscan's plea to have the more lenient construction requirements contemplated for purely subscriber-based MAS bands applied as well to Radscan's proposed EA licenses in the 928/952/956 MAS bands. See Comments of Radscan at 20. This would create an unjustifiable inequity between private and commercial licensees in these bands and would further enhance the ability of the latter to hoard spectrum that may be urgently needed by the former.

has proposed to designate the 932/941 MHz and 928/959 MHz MAS bands for subscriber-based services. The grandfathering (rather than displacement) of incumbent private licensees also would be unacceptable, as such licensees must have the ability to expand their operations in the only MAS bands in which the Commission currently is proposing to allow them to operate.

C. The Commission Should Not Allow Mobile Operations on a Co-Primary Basis on MAS Channels

10. API agrees with the many commenters that have expressed opposition to the Commission's proposal to allow mobile operations in the MAS bands on a co-primary basis with MAS operations.^{16/} As Black & Associates (a frequency coordinator of MAS applications) explained in its Comments, allowing mobile services on MAS channels "would lead to degradation of the multiple address bands because of increased co-channel interference." Comments of Black & Associates at 2. Such an outcome would be particularly unfortunate in light of the scarcity of MAS channels available for private use. API believes that the minimal interest expressed by commenters in providing mobile

^{16/} See Comments of MDS at 12; Comments of PSE at 4; Comments of PNM at 2; Comments of GTECH at 7-8; Comments of AICC at 5; Comments of Black & Associates at 2-3; Comments of UTC at 27-28; Comments of GPM at 7-8.

services on channels designated for MAS can be satisfied through the granting, on a case-by-case basis, of secondary authority to conduct such operations in the MAS bands or through the licensing of spectrum allocated for mobile use (much of which recently has been made available by the Commission).

II. CONCLUSION

11. As demonstrated by the Comments filed in this proceeding, the Commission's proposed new MAS licensing rules inexplicably disregard the current and growing requirements for private MAS spectrum. These requirements necessitate, at a minimum, that the Commission designate the 928/952/956 MHz MAS bands for private use and create a substantial private set-aside in the 932/941 MHz MAS band. The Comments also support the continued site-by-site licensing of private MAS bands and the reservation of primary authority in these bands for the provision of MAS services only.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Reply

Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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