

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
<http://www.mwe.com>

Shirley S. Fujimoto
Attorney at Law
sfujimoto@mwe.com
202-756-8282

Boston
Chicago
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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Promotion of Spectrum Efficient Technologies on Certain
Part 90 Frequencies; FCC Docket No. RM - 9332

**STATEMENT IN OPPOSITION TO AMTA PETITION FOR
RULEMAKING**

Dear Ms. Salas:

On behalf of Atlantic City Electric Company, Cinergy Corp., Delmarva Power & Light Company, Entergy Services, Inc. and Indianapolis Power & Light Company, we are submitting for filing the above-referenced Statement in Opposition to AMTA Petition for Rulemaking. We have enclosed an original and 9 copies for filing with the Commission, plus an additional copy for date-stamp and return to this office.

We trust the FCC will find this filing to be in order for acceptance and review. Should the FCC have any questions or concerns, please do not hesitate to contact the undersigned directly.

Cordially yours,


Shirley S. Fujimoto

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

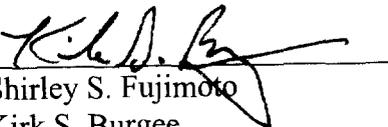
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Technologies on Certain Part 90 Frequencies)

To: The Commission

STATEMENT IN OPPOSITION TO
AMTA PETITION FOR RULEMAKING

ATLANTIC CITY ELECTRIC COMPANY
CINERGY CORP.
DELMARVA POWER & LIGHT COMPANY
ENTERGY SERVICES, INC.
INDIANAPOLIS POWER & LIGHT COMPANY

By: 
Shirley S. Fujimoto
Kirk S. Burgee
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
(202) 756-8000

Their Attorneys

Dated: August 31, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
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Promotion of Spectrum Efficient) RM - 9332
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To: The Commission

**STATEMENT IN OPPOSITION TO
AMTA PETITION FOR RULEMAKING**

Atlantic City Electric Company (Atlantic), Cinergy Corp. (Cinergy), Delmarva Power & Light Company (Delmarva), Entergy Services, Inc. (Entergy) and Indianapolis Power & Light Company (IPL) (collectively "the Utilities"), through their undersigned counsel and pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission (FCC), 47 C.F.R. 1.405, hereby submit this Statement in Opposition to the Petition for Rulemaking filed with the FCC on June 19, 1998 by the American Mobile Telecommunications Association, Inc. (AMTA).

As detailed more fully below, AMTA's proposal to establish mandatory narrowbanding in the 800 MHz band would jeopardize vital telecommunications functions of the Utilities and would constitute an extraordinary and unwarranted hardship for all similarly situated licensees. The Utilities therefore strongly urge the FCC to deny the Petition insofar as it seeks to initiate a rulemaking designed to compel migration to narrowband technology at 800 MHz under penalty of secondary status.

I. Statement of Interest

1. The Utilities are a group of electric and gas utilities, and two utility holding companies, which provide electrical power and natural gas in various markets across the country. Based upon the critical interests at stake, the Utilities have decided to file this Statement in Opposition jointly to express their collective objection to AMTA's Petition for Rulemaking.

2. Atlantic provides electric service to approximately 465,000 customers across its 2,700 square mile service territory, which includes Atlantic City and Southern New Jersey. Based in Cincinnati, Ohio, Cinergy Corp. is one of the largest diversified energy companies in the United States and is the parent company of The Cincinnati Gas & Electric Company and PSI Energy, Inc., which together, serve 1.4 million electric and 455,000 gas customers across 25,000 square miles in Ohio, Indiana and Kentucky. Cinergy is also the largest non-nuclear electric generating company in the United States, with 11,000 megawatts of owned capacity. Delmarva provides electric service to 540,000 customers across 5,700 square miles, including most of the Delaware-Maryland-Virginia Peninsula. Entergy is one of the largest electric utility holding companies in the country covering Louisiana, almost all of Arkansas, a portion of Texas and the western half of Mississippi. Under its umbrella, operating companies operate an integrated electric utility system, which serves over 2.3 million customers. IPL provides electric service to 400,000 customers primarily in Marion County, Indiana.

3. Collectively, the Utilities provide service to approximately six million customers across a significant portion of the country.

4. For the benefit of both customers and employees, the Utilities must conduct operations in an exceptionally safe and efficient manner, requiring them to maintain highly reliable communications systems. To address their land mobile radio communications needs, each of the Utilities has implemented a wide-area, 800 MHz land mobile radio system. The

Utilities recognize that their ability to maintain viable 800 MHz systems and to meet both internal and customer service demands could be seriously compromised by AMTA's Petition for Rulemaking to impose mandatory narrowbanding upon the 800 MHz band. The Utilities therefore strongly oppose AMTA's Petition.

II. Discussion

5. In its Petition for Rulemaking, AMTA asks the FCC to adopt specific deadlines by which non Public-Safety licensees of Part 90 frequencies between 222 MHz and 896 MHz must migrate to 12.5 kHz narrowbanded technology or have their operations subject to secondary status. Specifically, AMTA proposes mandatory migration of licensees located in the top 50 markets detailed in FCC rule 90.741 by December 31, 2003, licensees in markets 50 to 100 by December 31, 2008 and all remaining licensees by December 31, 2020. AMTA asks that the FCC exempt frequencies that are subject to auction from the scope of the requested relief. The Utilities strongly urge the FCC not to grant AMTA's Petition insofar as it seeks mandatory narrowband operations at 800 MHz.

A. AMTA's Proposal Would Work an Extraordinary and Undue Hardship on Utilities and Other Similarly Situated Licensees.

6. Due to the vital importance of reliable communications when dealing with high-voltage electrical power and pressurized natural gas, utilities license, build and maintain their own highly reliable wireless systems at considerable expense. This is necessary because utility communications needs are unique, demanding a performance standard that common carrier providers cannot typically justify providing on their own systems. While the systems are

absolutely necessary to ensure reliable utility service to all customers, utilities are statutorily obligated to their ratepayers to be extremely deliberate and circumspect in implementing them. Accordingly, the systems are budgeted and planned years in advance and designed for the maximum possible useful life, typically about fifteen years. In short, utilities invest extraordinary resources, funds and time in their systems with governmental approval, reasonably anticipating that their investment will have lasting benefits.

7. AMTA asserts, without substantiation, that the recommended efficiency standard of 12.5 kHz channels is "achievable and affordable today." To the contrary, AMTA's proposal, if entertained by the FCC, would result in significant and costly disruption to utilities that have invested in 25 kHz technology. Each of the Utilities has stations located within at least one of markets 1 through 50, and would therefore be required to migrate by the end of 2003. Mandated migration to narrowbanded channels would require drastic, wholesale reconfigurations of existing systems. At a minimum, the Utilities would be required to replace their mobile and portable units completely. Wide area utility systems typically have mobile unit loading that numbers in the thousands and new vehicular or portable mobile units typically cost several thousand dollars per unit. Accordingly, imposing AMTA's proposal on a utility with even a modest sized land mobile system could require an expenditure of six million dollars or more to address the changeout of the mobile units alone. Additionally, unless a licensee's mobile relay equipment has been purchased within the last several years, it is reasonable to conclude that migration would require complete replacement of existing fixed stations as well. Even where equipment is new enough that reprogramming is technologically feasible, the cost of doing so will easily run into the multi-million dollar range. Assuming that this were economically feasible at all, the transition would constitute an extraordinary expense and result in unnecessary, premature and wasteful obsolescence of equipment that is being paid for by utility ratepayers.

8. AMTA contends that its “proposal permits licensees to decide what, if any, investment they are prepared to make to maintain primary status, an option that should prove particularly valuable in more rural areas where demand for spectrum is relatively limited.” The apparent suggestion that the proposal offers licensees such as the Utilities a meaningful choice, *i.e.* exclusivity versus secondary status, is incorrect. The Utilities have located their operations in the 800 MHz band, at great expense, because exclusivity of operations is vital to their ability to carry out their utility functions safely and effectively. Secondary status is not a realistic option and, AMTA’s assertions notwithstanding, the proposal offers only one, costly and wasteful avenue for utilities.

B. The Functions Supported By Utility Land Mobile Systems Have Profound Implications For Public Safety and Welfare and Cannot Be Compromised.

9. By seeking to exempt Public Safety entities from its reach, AMTA implicitly acknowledges the negative impact its proposal would work upon licensees, as well as the need to avoid disruption to critical public safety activities. AMTA’s proposal would, however, extend to all other Part 90 licensees in the 800 MHz band, failing to account for the highly sensitive nature of the activities supported by utility land mobile systems.

10. Electrical power impacts virtually every aspect of modern life, including “Public Safety entities” themselves. Without electrical power, common carrier communications systems do not operate, transportation is hindered or prevented and the burden placed upon police, fire and rescue personnel is greatly increased. It is therefore impossible meaningfully to separate the functions of utilities from those of entities typically characterized as “public safety” when assessing their relative importance to the public welfare.

11. As the FCC is well aware, land mobile communications serve several important functions for utilities. Wireless communications permit utilities to perform routine inspections and maintenance in a highly effective and efficient fashion, helping to maintain the integrity of the power grid and reducing the possibility of disruptions to service or system failures. During times of severe weather, natural disasters, or heavy customer demand, land mobile communications are truly indispensable to utilities. Utility land mobile systems facilitate rapid deployment of personnel to the locations at which they are most needed. They permit a high level of reliability in communications, often in near-chaotic circumstances, thus maximizing the safety of life, limb and property during emergencies when utilities must restore power.

12. Indeed, Congress has recently recognized the importance of utility and other private radio networks to public safety. In the Balanced Budget Act of 1997, Congress expressly exempted from the scope of auctionable spectrum that which had been licensed for “public safety radio services,” a category that includes “private internal radio services used by State and local governments and non-government entities . . . that--(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public”¹

13. The Conference Committee report to the Balanced Budget Act confirms the applicability of Section 337(f)(1) to the types of activities provided by the Utilities:

[T]he exemption from competitive bidding authority for “public safety radio services” includes “private internal radio services” used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or property and are not made commercially available to the public. The conferees note that the public safety radio services exemption described herein is much broader than the explicit definition for ‘public safety services’ contained in section 3004 of this title. . . .²

¹ 105 P.L. 33, 111 Stat. 251, § 3002(a) (1997).

² House Rpt. 105-217, 105th Cong., 1st Sess., Balanced Budget Act of 1997, July 30, 1997.

The Utilities submit that, in carving out this exception, Congress wisely recognized the value to the public that utilities and other private licensees provide. Based on the importance, recognized by Congress, of the activities the Utilities support with their systems, the FCC should not entertain the requested rulemaking.

14. As demonstrated above, utilities have relied on the FCC's rules to develop and implement systems based on 25 kHz channelization in support of their critical utility operations. It is clear that any change in the FCC's current regulations in this regard could have a severe impact on the ability of the Utilities and other similarly situated licensees to serve their customers, the general public.

C. In the event that the FCC entertains AMTA's petition, it must take steps to protect the interests of utilities.

15. For the reasons set forth above, the Utilities strongly urge the FCC to deny AMTA's petition to initiate a rulemaking proceeding in this area. In the event that the FCC is inclined to undertake a rulemaking, however, the Utilities urge the FCC to implement measures that will protect utility licensees from the oppressive effects of mandatory migration to narrowbanded operations. Specifically, the Utilities urge the FCC to either (1) exempt the 800 MHz band from the scope of any rulemaking, or (2) exempt utility and other land mobile operations falling within the scope of "private radio services" as used in Section 3002(a) of the Balanced Budget Act of 1997. Failing the adoption of either of these measures, the Utilities ask that the FCC institute a procedure for utilities to remain on their existing channels for a period of at least the useful life of their current systems.

III. Conclusion

16. While AMTA characterizes mandatory narrowbanding as a “modest” but “absolutely essential” proposal, it is neither. If adopted by the FCC, required migration to narrowbanded channels would cause extraordinary disruption and expense for the Utilities and other licensees that have invested in systems in reliance upon the existing channelization. The Utilities submit that, when the above impact is weighed against any perceived benefit that the proposal might bring, AMTA’s proposal is not warranted .

WHEREFORE, THE PREMISES CONSIDERED, Atlantic City Electric Company, Cinergy Corp., Delmarva Power & Light Company, Entergy Services, Inc. and Indianapolis Power & Light Company request that the FCC deny AMTA’s Petition for Rulemaking insofar as it seeks mandatory migration to narrowbanded operations at 800 MHz.

Respectfully submitted,

**ATLANTIC CITY ELECTRIC COMPANY
CINERGY CORP.
DELMARVA POWER & LIGHT COMPANY
ENTERGY SERVICES, INC.
INDIANAPOLIS POWER & LIGHT COMPANY**

By: 
Shirley S. Fujimoto
Kirk S. Burgee
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
(202) 756-8000

Their Attorneys

Dated: August 31, 1998

CERTIFICATE OF SERVICE

I hereby Certify that on this 31st day of August, 1998, I caused true and correct copies of the Statement in Opposition to be served via hand delivery on:

Magalie R. Salas
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Alan R. Shark, President
American Mobile Telecommunications Association, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs, Esq.
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036


Kirk Burgee