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BEFORE THE
Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Promotion of Spectrum Efficient
Technologies on Certain Part 90
Frequencies

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) RM No. 9332
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To: The Commission

**REPLY
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits this Reply to Comments and Statements filed in response to the Petition for Rule Making of the American Mobile Telecommunications Association, Inc. ("AMTA") that seeks amendment of the Commission's rules to mandate the transition to narrowband technologies by certain Private Land Mobile Radio Service ("PLMRS") licensees authorized to employ spectrum

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in the bands between 220 MHz and 896 MHz.^{1/} For the reasons expressed herein, API urges the Commission to deny AMTA's Petition.

I. BACKGROUND

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. 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 petroleum and natural gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications systems, facilities in the PLMRS. Many of these systems employ assignments from the bands 450-470 MHz, 470-512 MHz, and 806-824/851-869 MHz ("800 MHz"). API's members utilize these systems, for example, to support the search for

^{1/} See Public Notice, Report No. 2288, released July 31, 1998. Comments and Oppositions were filed on August 31, 1998.

and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers. Due to the importance of these PLMRS systems to the operations of its members, API has participated in all of the Commission's major rule making proceedings addressing use of the spectrum in these bands.

II. DISCUSSION

3. AMTA asks the Commission to adopt rule amendments to require PLMRS licensee conversion to narrowband, or equivalently efficient equipment by a date certain depending upon the size of the market in which a system operates ((i.e. December 31, 2003 for the top 40 markets, December 31, 2008 for markets 51-100, and December 31, 2020 for markets 101 and above). AMTA argues that failure of a licensee to convert by the date certain should result in the licensee being relegated to secondary status.

4. Commenters generally oppose AMTA's mandated deadlines for the transition to narrowband systems. None of the commenting parties unequivocally stated their support of AMTA's petition. Generally, commenting parties argued that the Commission should not consider AMTA's petition, since the Commission already has considered, and determined not to impose, mandatory deadlines for the transition to

narrowband systems in the bands below 806 MHz in the refarming proceeding.^{2/} Some parties, such as UTC and the Personal Communications Industry Association ("PCIA"), that originally supported a mandated transition to narrowband systems requested that, if the Commission decides to initiate a rule making proceeding to consider AMTA's petition, the agency should consider more realistic transition deadlines.^{3/}

5. In regards to AMTA's proposal for mandated transition to narrowband technologies in the Industrial/Land Transportation ("I/LT") and Business ("B") 800 MHz pools, the commenting parties oppose AMTA's proposal of mandated transition. API agrees that it is inappropriate to consider mandatory transition for I/LT and B licensees in the 800 MHz band in conjunction with mandatory transition deadlines for licensees in the refarmed spectrum below 806 MHz.

6. Many parties note that AMTA wrongly assumes that 25 kHz bandwidth channels on the 800 MHz band are not spectrally efficient. These parties argue that trunked systems operating on 25 kHz I/LT and B channels in the 800 MHz band are

^{2/} See PR Docket No. 92-235, Second Report and Order, 12 FCC Rcd 14307 (1997); PR Docket No. 92-235, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 10076 (1995).

^{3/} UTC Comments at p. 12; PCIA Comments at p. 5.

spectrally efficient and AMTA fails to recognize this use.^{4/} UTC and various electric companies (i.e. Atlantic City Electric Company, Cinergy Corp., Delmarva Power & Light Company, Entergy Services, Inc., Indianapolis Power & Light Company and South Carolina Electric and Gas) detail the functions of their 800 MHz PLMRS systems. It is evident that the 800 MHz systems employed by these electric utilities are heavily relied upon for day-to-day operations and emergency uses and cannot be easily adapted to narrowband technologies. Because PLMRS systems operating in the 800 MHz band are subject to a different regulatory structure than PLMRS systems operating on the frequencies in the band below 800 MHz, numerous parties urged the Commission to consider any changes in narrowband transition in the 800 MHz band independently from the PLMRS spectrum below 800 MHz.^{5/}

7. API joins those parties that strongly urged the Commission to deny AMTA's mandatory transition proposal for PLMRS licensees operating below 800 MHz. The Commission in its Report and Order in the refarming proceeding clearly rejected

^{4/} UTC Comments at pp. 7-10; PCIA Comments at p. 6; Atlantic City Electric Company, Cinergy Corp., Delmarva Power & Light Company, Entergy Services, Inc., Indianapolis Power & Light Company ("Utilities"), Statement in Opposition to AMTA Petition for Rule Making at pp. 3-5.

^{5/} ITA Comments at p. 3, SCANA Statement in Opposition at p. 5; USMSS, Inc. Comments at p. 2; Council of Independent Communications Suppliers Comments at p. 2.

mandated transition to narrowband equipment.^{6/} Instead, the Commission adopted a narrowband type-acceptance requirement applicable to equipment manufacturers, thereby relying on marketplace forces, instead of government imposed mandates, to transition the PLMRS to narrowband technologies.^{7/} The public interest would be far better served in this technology conversion context by the Commission taking prompt action to remove the current uncertainty that is delaying use of high power equipment on 12.5 kHz channels in the band 450-470 MHz.

8. AMTA's request for mandated transition dates for narrowband equipment, three years after the Commission has rejected that approach, is patently self-serving. As noted by UTC, AMTA's members, SMR operators, are just beginning to become prevalent in the 450-512 MHz band while utilities, pipelines and other private land mobile radio operators have invested heavily in communications systems in this band.^{8/} As a result, adoption of AMTA's proposal would have minimal impact on commercial service providers, who stand to pick up additional channel assignments and customers as PLMRS users are effectively forced off of their channels. On the other hand, incumbent

^{6/} Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, Report and Order, PR Docket No. 92-235, 10 FCC Red 10076 (1995) at ¶30-41.

^{7/} *Id.* at ¶ 36.

^{8/} UTC Comments at p. 12.

operators of large private, internal use systems would face serious financial hardships as they would be forced to change out technologies with no corresponding benefits for themselves.^{2/}

9. Secondary status would be catastrophic for the many petroleum and natural gas companies licensed in the PLMRS spectrum below 800 MHz as well as in the 800 MHz band who rely on their two-way land mobile radio systems to provide an operational and essential safety tool to support all aspects of their energy activities. Often, these channels serve critical safety and environmental functions, such as the facilitation of spill and leak prevention, detection and clean-up efforts. In addition, as noted in API's Reply Comments filed in connection with its Petition for Reconsideration of the Second Report and Order in the refarming proceeding, there are many Federal, state and local regulations which mandate the use of reliable communications facilities as a way of ensuring the general public welfare, promoting industrial workplace safety, and safeguarding important environmental concerns. The FCC has recognized the critical communications requirements of licensees engaged in petroleum, power and railroad operations. The Commission concluded, in its Second Report and Order in the refarming proceeding, that these classes of licensees engage in

^{2/} Id.

[D]ay-to-day operations provide[ing] little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare.^{10/}

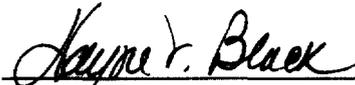
10. If the Commission were to mandate narrowbanding on these channels with the threat of imposing secondary status on entities that did not convert to narrowband systems by a date certain, many API members would be forced to invest substantial amounts of money in rebuilding communications systems, which have not reached the end of their useful life or are already spectrally efficient, or, if relegated to secondary status, be faced with the option of putting their employees and the public at risk. Forcing oil and gas industry licensees to make such radical changes is contrary to the public interest, and in light of the continued need for PLMRS channels to meet the internal communications requirements of critical infrastructure industries such as petroleum and natural gas, API strongly urges the Commission to promptly deny AMTA's Petition for Rule Making.

^{10/} Second Report and Order at ¶ 41.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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Dated: September 15, 1998

CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary in the law firm of Keller and Heckman LLP, do hereby certify that a copy of the foregoing REPLY OF THE AMERICAN PETROLEUM INSTITUTE has been served this 15th day of September 1998 by mailing U.S. First-Class, postage prepaid, to the following:

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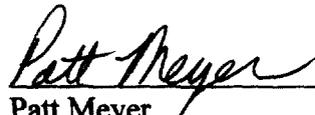
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