

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishment of Public Service Radio)
Pool in the Private Mobile) RM 9405
Frequencies Below 800 MHz)
)

To: The Commission

UTC COMMENTS

Pursuant to Section 1.405 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC), hereby submits its comments in support of the *Petition for Rulemaking* to establish a new Public Service Pool in the private radio bands below 800 MHz, filed on August 14, 1998 by UTC, The American Petroleum Institute (API) and the Association of American Railroads (AAR) (collectively the Critical Infrastructure Industries or CII).¹ UTC urges the FCC to follow the clear mandate of Congress to protect "public safety radio services," including utilities and pipelines, by establishing a new Public Service Pool in the private bands below 800 MHz.

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¹ By *Public Notice*, Report No. 2306, the FCC requested comments on the Critical Infrastructure Industries' *Petition* by December 23, 1998.

I. Background

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's approximately 1,000 members range in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Serving on UTC's Board of Directors are representatives from its affiliated trade associations, including:

- ◆ American Gas Association
- ◆ American Public Power Association
- ◆ American Water Works Association
- ◆ Association of Edison Illuminating Companies
- ◆ Edison Electric Institute
- ◆ Interstate Natural Gas Association of America
- ◆ National Rural Electric Cooperative Association

All UTC members depend on reliable communications systems in carrying out their important public service obligations, and many operate private land mobile systems in the bands below 512 MHz. UTC serves as the authorized frequency advisory committee for the radio channels formerly allocated exclusively to the Power Radio Service. UTC's members rely on their private land mobile systems to provide a variety of critical services, including communications with emergency dispatch and restoration crews.

Approximately one year ago, the FCC consolidated its radio service pools into two broad categories: Public Safety and Industrial/Business. Several months later, UTC's members began

to report instances of interference. UTC began working within the framework of the existing licensing rules to address these problems, but soon realized that there was no effective piecemeal solution and that after-the-fact resolutions were jeopardizing public safety.

On August 14, 1998, UTC and the other representatives of the Critical Infrastructure Industries filed the *Petition* to establish a new Public Service Pool of frequencies. This *Petition* proposed a long-term solution to problems of interference that were occurring as a result of the licensing of new Industrial and Business systems near utility and pipeline communications systems. The long-term solution built upon an interim solution that was proposed by UTC and API in June 1998 in its *Emergency Request for Limited Licensing Freeze*, to temporarily limit licensing on channels shared by other entities with utilities and pipelines.

II. Congress Has Provided Recent, Repeated Guidance to the FCC to Protect Utility and Pipeline Operations from Interference

Subsequent to the filing of the *Petition* in August, there has been a great deal of Congressional activity on the issue of radio interference and the need to protect and promote utility, pipeline and other public safety radio services. These actions are unambiguous in their message -- the FCC must take action to protect utility and pipeline communications from interference.

A. Congressional Letter to Chairman Kennard Urges FCC to Resolve Interference Problems to Utility and Pipeline Spectrum Before Congress is Forced to Take Action

On December 4, 1998, ten (10) members of the US House of Representatives Commerce Committee, including six (6) members of the Telecommunications Subcommittee, sent a letter to Chairman Kennard urging him to protect utility and pipeline channels from dangerous interference.² A copy of this letter is attached in Appendix A to these comments.

The Congressional representatives noted that the numerous instances of interference from non-public safety related users have “put at risk the lives and safety of utility and pipeline maintenance and emergency response crews” and “hampered the efforts of police and fire crews to protect people’s lives and property.” The letter further stated that, although the “Federal Communications Commission may have rescinded the licenses of the most egregious offenders, it has taken no steps to implement a long-term solution to prevent harmful interference to the mobile dispatch and emergency response transmissions of utilities and pipelines.”

The Congressional representatives expressed fear that “the potential for a large-scale disaster is rising.” While acknowledging the importance of “the need to maximize efficient spectrum use through shared channel licensing,” the congressional representatives insisted that “efficiency can be achieved without unnecessarily placing peoples’ lives and property at risk.”

² Signing the letter were House Telecommunications Subcommittee members Joe Barton (R-TX), Paul Gillmor (R-OH), John Shimkus (R-IL) and Karen McCarthy (D-MO), House Commerce Committee members Edward

The letter concluded by strongly urging “*the FCC to take quick and decisive action to adopt the appropriate coordination guidelines to protect these vital emergency communication systems from interference. Otherwise, Congress will be certain to take appropriate action when we reconvene.*”

B. Congress Introduced The Critical Infrastructure Protection Act of 1998 to Provide Interim and Long-Term Solutions to Interference Problem

On October 12, 1998, Representatives Walter Jones (R-NC) and Richard Burr (R-NC) introduced HR 4813, The Critical Infrastructure Radio Systems Protection Act of 1998 (CIPA 98), which urged the FCC to take immediate steps to eliminate instances of interference to private land mobile systems of utilities and pipelines. A copy of this bill is attached to these comments as Appendix B.

Section 4 of CIPA 98 incorporated the provisions of UTC’s *Emergency Request for Limited Licensing Freeze* by mandating that the FCC discontinue licensing radio systems on channels that, prior to the recent rule change, were allocated for use by the utilities or pipelines. This moratorium would also apply to systems operating on adjacent channels (less than 15 kHz above or below the channel at issue). Licensing would be permitted for new systems on these channels if the applicant obtained the concurrence of incumbent utility and/or pipeline company or of the authorized frequency coordinating committee(s).

Whitfield (R-KY), Ted Strickland (D-OH), Ralph Hall (D-TX) and Frank Pallone (D-NJ) and Representatives Walter Jones (R-NC) and Rodney Frelinghuysen (R-NJ).

Section 3 of CIPA 98 urged the FCC to provide a permanent solution to the interference problem. The bill did not dictate a solution to the FCC, but stated that any such solution would need to be consistent with Congress's protection of "public safety radio services" found in Section 309(j)(2)(A) of the Communications Act. CIPA 98 clearly and unequivocally recognized that utility and pipeline operations are included in the "public safety radio services" auction exemption. Dispelling the misconceptions that have been spread regarding the scope of this exemption by parties with an interest in unnecessarily narrowing or expanding the exemption, CIPA 98 clarified that "public safety radio services" include:

those radio services described in section 309(j)(2)(A) of the Communications Act of 1934 which include private internal radio services used by State and local governments and nongovernment entities such as electric, gas, and water utilities and natural gas and petroleum pipelines that are used to protect the safety of life, health, or property and are not made commercially available to the public.

C. Congress Encourages Interference Resolution in FCC Funding Legislation.

Congress's message to the FCC was further emphasized by language incorporated in the conference committee report that accompanied the appropriations bill for the Commerce, State and Justice Departments, which includes the funding for the FCC's activities. In the official report, the members of the House of Representatives and the Senate that were assigned to produce the final version of the bill included the following language:

The conferees note that operators of public safety radio systems are concerned about interference on frequencies they use for emergency dispatch crews. The conferees encourage the FCC to consider measures to address this concern through prior coordination of radio systems.³

³ Conference Report (H. Rept. 825) to HR 4328, Making Omnibus Consolidated And Emergency Supplemental Appropriations For Fiscal Year 1999.

The FCC must not ignore the guidance of Congress on this issue. Through its letter, legislation and report language, Congress has indicated that it expects the FCC to take quick action to provide a workable long-term solution to the problem of interference.

III. The Critical Infrastructure Industries' Proposal is A Reasonable Solution to The Difficulties Encountered by Pool Consolidation

UTC sees no reason to reiterate the extensive arguments made in the *Petition* in support of the Public Service Pool. However, UTC would like to summarize some of the more pertinent points made in the *Petition*.

The instances of interference are serious and widespread. Since the new consolidation/sharing rules took effect, the Critical Infrastructure Industries have suffered numerous incidents of harmful interference from industrial mobile users coordinated on the same frequencies as emergency mobile dispatch units. The instances of interference are occurring throughout the US and are being caused by a variety of new licensees. The widespread nature of the problem requires a broad, proactive solution. Instances of interference have occurred in the following states:

Massachusetts: EUA Service Corporation, headquartered in West Bridgewater, Massachusetts and a subsidiary of Eastern Utility Associates, has experienced interference from two additional licensees on the same channel EUA uses for switching operations and transmission line restoration. These two users, a realty company and a tour company, are licensed directly across Boston Harbor and within 20 miles from the utility's nearest repeater. EUA has also tracked interference on its channels from yet another source. EUA anticipates that its ability to respond quickly and effectively during major storms will be compromised by harmful interference from these licensees as well as others that may be coordinated to share the same channel.

Missouri: Kansas City Power & Light Company (KCPL) is a regional electric utility serving customers in the Kansas City metropolitan area and surrounding 23 counties of western Missouri and eastern Kansas. In August 1998, a for-profit property management company's radio system was licensed on the same frequency pair that has been licensed for over 18 years by KCPL's North Kansas City Customer Service Operations Department. This new radio system had overlapping radio coverage with KCPL and was located approximately 20 miles from KCPL's radio system. For 10 days, critical KCPL radio calls were disrupted, and radio operations severely compromised because of harmful interference from the property management company's mobile radios. In fact, when both parties used their radios, KCPL communications were entirely blocked. Subsequently, additional interference was detected, and KCPL initiated yet another investigation to locate the new source.

New Jersey: Public Service Electric and Gas Company (PSE&G), New Jersey's largest supplier of gas and electric service, has operated a mobile dispatch service on a non-exclusive frequency for the past 17 years. In February, a for-profit community repeater system was coordinated on the same frequency. Its signal was so strong that PSE&G's dispatcher could not hear the mobile units and the mobile units could not hear the dispatcher. To make matters worse, a customer of this new system, a limousine service in NYC, utilized the frequency more than 80% of the time. From February 9 through June 19, PSE&G was unable to dispatch crews to assist municipal fire and police on at least sixteen (16) separate occasions, delaying utility disconnects and rescue efforts. While this particular system has been ordered to cease operations, two other for-profit radio systems have been coordinated on the very same frequency without regard to whether harmful interference will again prevent or delay utility emergency response capabilities.

New York: New York State Electric & Gas Corporation has utilized the same channel for many years to dispatch crews throughout the State of New York during storm and other emergency situations and disasters, and for mutual aid to other power systems. It has discovered that a for-profit private paging service has been coordinated and could soon be licensed throughout the state on this same channel which NYSEG considers critical to the clear and error free transmission of switching orders when the normal operating channel is busy or degraded. NYSEG believes it is only a matter of time before emergency response capabilities are compromised.

North Carolina: Cateret-Craven Electric Cooperative (CCEC), headquartered in Morehead City, operates its mobile dispatch service on two frequencies. Since April or May of this year, almost continuous paging tones from a company licensed on one of these same frequencies has limited communication to CCEC's field crews to a single frequency. This interference creates a hazardous situation even in everyday business; during hurricane season, interference makes a bad situation even worse. Constant contact with field crews prior to and after large storms is crucial to the protection of people's lives and safety. In fact, this interference became intolerable during restoration of the system following Hurricane Bonnie in August. Although both the paging company and the FCC have been notified about this situation, the interference continues. As the chances of another major storm increase, CCEC

has growing concerns that its ability to maintain and restore power safely will again be compromised.

South Carolina: Carolina Power and Light Company (CPLC) which operates in both **North Carolina** and South Carolina, has been using a UHF frequency within a 25-mile radius of Florence, South Carolina since 1975 for mobile dispatch and electric power restoration. A local business used by CPLC to repair its radio equipment informed CPLC that another local company's system had been licensed, but not yet installed, on the exact same frequency used by CPLC. Fortunately, this newly licensed radio system was not installed. Interference from this new system would have jeopardized the lives and safety of CPLC line and service personnel, especially during storm conditions and hurricanes. Thanks to the fortuitous intervention of a technician, a disastrous situation was averted.

Wisconsin: Dairyland Power Cooperative (DPC) is a large generation and transmission cooperative serving rural electric cooperatives and municipals in Wisconsin, Minnesota, Illinois and Iowa. DPC and the member companies it serves are part of the Restoration of Power in Emergencies (ROPE) program. This program was developed several years ago to coordinate the activities of member cooperatives during emergency situations. All mobile and portable radios used by DPC and its member cooperatives are programmed with all the frequencies used by each company, thus enabling communication by all personnel during emergencies. Recently, a DPC member cooperative has reported harmful interference on its mobile frequency. After a difficult investigation, DPC has determined that a manufacturing concern has been licensed on the same frequency approximately 60 miles away. It is believed that this manufacturing concern will not be willing to change frequencies. If reducing transmitter power or changing directional antennas cannot eliminate this interference, the only option is for the cooperative to change frequencies. This is no small task: even though DPS itself has only twenty mobile units, more than 700 mobiles operated by the other members of the ROPE program would have to be changed in order to protect the integrity of the ROPE program and to insure the safety of maintenance personnel, customers and the public on a daily basis as well as during emergencies.

The Public Service Pool Would Enhance Public Safety. By protecting the critical communications capabilities of those industries upon which public safety agencies rely in emergency response situations, the new Public Service Pool would enhance public safety and the lives of emergency response crews. In each of the examples of interference described above, CII radio systems are essential in protecting against very real threats to life, health and property. The Critical Infrastructure Industries' proposal provides this additional protection for public safety

operations without affecting the eligibility for, or use of, channels allocated to the Public Safety Pool.

The Establishment of a Public Service Pool Would Protect The Capability of Critical Infrastructure Industries to Respond to Future Threats to Public Safety. As was noted in the *Petition*, the problems caused by the licensing of new industrial and CII systems in the same pool include not only interference, but also the potential foreclosure of access to spectrum for CII systems. As more and more industrial systems are licensed, less and less spectrum will be available to meet the public safety-related needs of Critical Infrastructure Industries. There is increasing public and governmental concern over protection of the nation's critical infrastructure against both natural disasters and intentional disruptions, and maintenance of reliable communications for CII entities will be crucial.⁴ Establishing a separate pool will provide a long-term solution to both these problems.

The Critical Infrastructure Industries Proposed Channel Allocation Is Equitable to All Parties. Because the new Public Service Pool would need to consist of all channels formerly allocated exclusively to the Power, Petroleum and Railroad Radio Services, as well as an equitable portion of the channels formerly shared by these services with one or more of the other services in the Industrial/Business Pool, the Critical Infrastructure Industries needed to find an equitable way to allocate shared channels. The method used – allocating channels based on verifiable figures of actual channel usage -- is fair and workable. Under this method, the Public

Service Pool would be allocated no more spectrum than it previously used, and only those channels that are heavily used by Critical Infrastructure Industries would be reallocated to the new pool.

Conclusion

UTC urges the FCC to quickly initiate a rulemaking to establish a new Public Service Pool in the private land mobile bands below 800 MHz. Congress has been clear and unequivocal in its support for a solution to the problem of interference to utility and pipeline communications systems. The long-term solution recommended by the Critical Infrastructure Industries in their *Petition* is a well-crafted and workable solution to this problem. The FCC should act in accordance with congressional intent by enacting new protections for these services in the private land mobile radio bands below 800 MHz.

⁴ See *Critical Foundations: Protecting America's Infrastructure*, The Report of the President's Commission on Critical Infrastructure Protection (October 1997).

WHEREFORE, THE PREMISES CONSIDERED, UTC, The Telecommunications Association, requests the Federal Communications Commission to take action in accordance with the views expressed above.

Respectfully submitted,

UTC, The Telecommunications Association

By:



Jeffrey L. Sheldon

Thomas Goode

1140 Connecticut Avenue, N.W., Suite 1140

Washington, D.C. 20036

(202) 872-0030

Dated: December 23, 1998

CERTIFICATE OF SERVICE

I, Tom Goode, do hereby certify that I have caused to be sent, this 23rd day of December, 1998, by first class mail, postage prepaid, copies of the foregoing to the following:

American Petroleum Institute

Wayne V. Black
Nicole Donath
Keller and Heckman, LLP
1001 G Street, NW
Washington, D.C. 20001
(202) 434-4293

Association of American Railroads

Louis P. Warchot, Esq.
Senior Vice President – Law and General
Counsel
50 F Street, NW
Washington, D.C. 20001

Association of American Railroads

Thomas Keller
Verner Lipfert
901 15th Street, NW
Suite 700
Washington, DC 20036



Tom Goode

Appendix A

**December 4, 1998, Letter from Members of US House of
Representatives to FCC Chairman William Kennard**

WILLIAM E. JONES
3011
R-1001
CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
TELEPHONE: 202-225-3415
COMMITTEES:
COMMITTEE ON BANKING AND
FINANCIAL SERVICES
COMMITTEE ON NATIONAL SECURITY
COMMITTEE ON RESOURCES

DISTRICT OFFICE
407-C EASTWOOD DRIVE
GREENVILLE, NC 27634
1-813-331-1000
1-800-351-007

Congress of the United States
House of Representatives
Washington, DC 20515-3303

December 4, 1998

Chairman William E. Kennard
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

Dear Chairman Kennard:

It has come to our attention that a growing number of utilities and pipelines are experiencing harmful interference on their private land mobile channels below 512 MHz. These cases of interference can be directly traced to the changes in the coordination and licensing procedures instituted as part of "refarming" under P.R. Docket 92-235.

In a number of these cases, interference from non-public safety-related radio users put at risk the lives and safety of utility and pipeline maintenance and emergency response crews, and hampered the efforts of police and fire crews to protect people's lives and property. In one particular case, a utility mobile dispatcher was unable to contact its field crews to shut off gas to a burning building because of continuous interference from a limousine paging service. In another, the ability of the utility to safely and quickly restore electric service following a hurricane was seriously hampered by continuous transmissions from a commercial paging service.

While the Federal Communications Commission (FCC) may have rescinded the licenses of the most egregious offenders, it has taken no steps to implement a long-term solution to prevent harmful interference to the mobile dispatch and emergency response transmissions of utilities and pipelines. In fact, the FCC had suggested to one utility that its emergency field crews should use pay phones to periodically check with their dispatcher for emergencies needing immediate attention until the FCC could negotiate a compromise with the commercial mobile service provider.

We understand that several petitions have been filed with the FCC which outline long-term solutions to this problem. To date, the Commission has not taken any of the petitions under serious review or consideration.

Meanwhile, the number of cases of harmful interference with utility and pipeline operations continues to grow. What was at first a northeast phenomenon, effecting New Jersey, New York and Massachusetts, has now spread across the nation, with cases of interference being reported in North Carolina, South Carolina, Georgia, Minnesota,

Wisconsin, Iowa, Illinois, Kansas and Missouri. Utility and pipeline communication systems are being threatened by this interference and the potential for a large-scale disaster is rising.

In recognition of this very serious situation, H.R. 4813, the "Critical Infrastructure Radio Systems Protection Action of 1998," was introduced. Very simply, it directs the FCC to adopt rules to ensure the on-going protection from harmful interference of private land mobile frequencies used by utilities and pipelines to protect life, health or property.

We do not seek to prevent access to these channels by other wireless radio users. We fully understand the need to maximize efficient spectrum use through shared channel licensing and recognize the difficulty in meeting the growing demands for this limited resource. However, efficiency can be achieved without unnecessarily placing peoples' lives and property at risk. Congress has already recognized the critical nature of reliable private wireless communications to utilities and pipelines by designating them "public safety radio services" exempt from spectrum auctions under the Balanced Budget Act of 1997.

We strongly urge the FCC to take quick and decisive action to adopt the appropriate coordination guidelines to protect these vital emergency communication systems from interference. Otherwise, Congress will be certain to take appropriate action when we reconvene.

Thank you, Chairman Kennard, for your efforts on this matter.

Sincerely,

<u>Walter B. Gorman</u>	<u>Frank Pellon, Jr.</u>
<u>John J. Hill</u>	<u>Red Strickland</u>
<u>W. Delaney Hays</u>	<u>Joe Bostor</u>
<u>Ed Winters</u>	<u>Karen McCarthy</u>
<u>Paul Gilman</u>	<u>Rep. M. Hall</u>

Appendix B

Critical Infrastructure Radio Systems Protection Act of 1998 (HR 4813)

105TH CONGRESS
2D SESSION

H. R. 4813

To amend the Communications Act of 1934 to protect critical infrastructure radio systems from interference and to promote efficient spectrum management of the private land mobile radio bands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 12, 1998

Mr. JONES (for himself and Mr. BURR of North Carolina) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Communications Act of 1934 to protect critical infrastructure radio systems from interference and to promote efficient spectrum management of the private land mobile radio bands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Critical Infrastructure
5 Radio Systems Protection Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Radio systems operated by electric, gas, and
2 water utilities and natural gas and petroleum pipe-
3 lines are essential to the protection of the nation's
4 critical infrastructure and public safety.

5 (2) Section 309(j)(2)(A) of the Communications
6 Act of 1934 (47 U.S.C. 309(j)(2)(A)) obligates the
7 Commission to protect and enhance the communica-
8 tions capabilities of "public safety radio services,"
9 including electric, gas, and water utilities and natu-
10 ral gas and petroleum pipelines.

11 (3) The Commission has provided for the pro-
12 tection of certain critical infrastructure private land
13 mobile radio services, including police and fire sup-
14 pression services, through the establishment of a
15 separate radio pool for these public safety services.

16 **SEC. 3. LONG-TERM SOLUTION.**

17 Not later than 180 days after the date of enactment
18 of this Act, the Commission shall adopt rules which ensure
19 the ongoing protection and promotion of spectrum used
20 by electric, gas, and water utilities and natural gas and
21 petroleum pipelines against interference from other users
22 of spectrum and consistent with the provisions of section
23 309(j)(2)(A) of the Communications Act of 1934.

1 **SEC. 4. TEMPORARY INTERFERENCE PROTECTION.**

2 (a) **LICENSING MORATORIUM.**—Until the rules pro-
3 mulgated by the Commission pursuant to section 3 of this
4 Act become effective, the Commission shall discontinue li-
5 censing private mobile radio facilities on—

6 (1) any channels that were formerly allocated
7 by the Commission to the Power Radio Service
8 (commonly referred to as the “IW Radio Service”)
9 or Petroleum Radio Service (commonly referred to
10 as the “IP Radio Service”) on either an exclusive or
11 shared basis; and

12 (2) any channels less than 15 kHz removed
13 from such channels.

14 (b) **EXCEPTIONS TO MORATORIUM.**—The Commis-
15 sion may, notwithstanding the moratorium imposed by
16 subsection (a), grant a license that is subject to such mor-
17 atorium if—

18 (1) the license applicant obtains the concur-
19 rence of the designated frequency advisory commit-
20 tee for the IW or IP Radio Service, or both, depend-
21 ing on whether the channel on which the applicant
22 is seeking to be licensed was formerly shared by 1
23 or both of these services; or

24 (2) the license applicant obtains and submits
25 written concurrence of all IW and IP radio services
26 licensees having a co-channel or adjacent-channel fa-

1 cility within 70 miles of the applicant's proposed
2 site.

3 **SEC. 5. DEFINITIONS.**

4 As used in this Act—

5 (1) **COMMISSION.**—The term “Commission”
6 means the Federal Communications Commission.

7 (2) **PUBLIC SAFETY RADIO SERVICES.**—The
8 term “public safety radio services” means those
9 radio services described in section 309(j)(2)(A) of
10 the Communications Act of 1934 which include pri-
11 vate internal radio services used by State and local
12 governments and nongovernment entities such as
13 electric, gas, and water utilities and natural gas and
14 petroleum pipelines that are used to protect the safe-
15 ty of life, health, or property and are not made com-
16 mercially available to the public.

○