

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

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

Reply Comments of the National Propane Gas Association

The National Propane Gas Association (NPGA), pursuant to Section 1.405(b) of the Commission's rules¹ and the *Public Notice* released on November 23, 1998, in the above-referenced matter, hereby respectfully submits these Reply Comments.²

I. Introduction

1. The NPGA is a national trade association for the propane gas industry with 3,700 members from all 50 states and 39 affiliated state or regional associations. Membership includes small businesses and large corporations engaged in the retail marketing of propane gas and appliances; producers, transporters, and wholesalers of propane gas; and the manufacturers and distributors of associated equipment and appliances. The NPGA's mission is to promote the safe and increased use of propane; to work for a favorable environment for propane production, distribution, and marketing; and to demonstrate the value of propane as an energy source.

II. Background

¹ 47 C.F.R. § 1.405(b) (Any interested person may file a reply to statements in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 15 days after the filing of such a statement.≡).

² *Public Notice*, Office of Public Affairs Reference Operations Division Petition for Rule Making Filed, Report No. 2306 (rel. Nov. 23, 1998).

2. On November 23, 1998, the Commission released a *Public Notice* inviting comment on a APetition for Rule Making≡ which had been filed by UTC, the Telecommunications Association, the Association of American Railroads, and the American Petroleum Institute (collectively, APetitioners≡).³ The Petitioners requested that the Commission create a new Apublic service≡ pool in the bands below 800 MHz in order to Aprotect vital public safety-related services from interference and encroachment by new industrial and commercial communications systems.≡⁴ On December 23, 1998, thirty-five parties filed comments in this matter. The NPGA did not file comments at that time. Now, however, the NPGA submits these AReply Comments≡ in order to ensure that its views regarding the matters raised in this proceeding are presented to the Commission.

III. Reply Comments

3. Petitioners urge the Commission to establish a new and distinct Apublic service≡ pool to protect the Apublic service≡ frequencies from the encroachment from Anon-essential≡ industrial services.⁵ According to Petitioners, unlike other industrial users, the utilities=, pipeline=s, and railroad=s use of a radio system is *directly* related to the protection of Aessential≡ public services.⁶ Several commenters echo the Petitioners= assertion maintaining that the power, petroleum, and railroad industries use land mobile communications to protect the safety of life, health, and property of the American public. As such, these commenters believe that the creation of a separate pool would ensure that the ability of these Acritical infrastructure industries≡ to provide Aessential≡ public services is not jeopardized by interference from Anon-essential≡ industrial users.⁷

4. The propane industry is one of these so-called Anon-essential≡ industrial users. However, as demonstrated below, the impertinent characterization of industrial users like

³ See Petition for Rule Making filed by UTC, the Telecommunications Association, the Association of American Railroads, and the American Petroleum Institute, dated Aug. 14, 1998 (Petition).

⁴ Petition at ii.

⁵ Petition at 6.

⁶ *Id.*

⁷ See e.g., Comments of American Petroleum Institute at 7-8; Comments of Association of American Railroads at 3; Comments of Baltimore Gas & Electric Company at 2; Comments of Benton County Public Utility District No. 1 at 1-2; Comments of New England Power Service Company at 1-2; Comments of New York State Electric & Gas Corporation at 1; Comments of Niagara Mohawk Power Corporation at 2-3.

the propane industry as Anon-essential≡ is unsupportable as an equally compelling argument can be made that the continued prosperity of the propane industry is vital to the safety of life, health, and property of the American people.

5. There are approximately 12,500 retail propane plants which distribute propane to farms, homeowners, businesses, and industry. Propane gas is used by approximately 60 million Americans for a wide range of uses, including cooking and heating. Propane is also used by farmers for crop drying and tobacco curing; as motor fuel in off-road vehicles and off-road forklift trucks; and in irrigation pumps. Almost 15 billion gallons of propane is produced annually in the United States. The propane transportation industry -- valued conservatively at \$10 billion -- consists of 70,000 miles of pipelines; several ocean-going tankers; about 90 inland waterway barges; 22,000 railroad tank cars; and 6,000 bulk transport trucks. Since virtually all propane, at some time or another, is transported via overland trucking, two-way radio communication is absolutely vital to the propane industry. As clearly demonstrated, to attempt to characterize this important industry as Anon-essential≡ is ridiculous.

6. Petitioners also assert that, because they are closely regulated public service industries, they require higher levels of reliability and security in their communications systems than other industrial users.⁸ This is simply not true. The storage, handling, and transportation of propane is regulated through a matrix of federal, state, and local laws. The U.S. Department of Transportation enforces the Hazardous Material Regulations which govern the interstate movement of propane gas. The Occupational Safety and Health Administration publishes workplace safety rules based largely on the industry standard, NFPA 58, which is published by the National Fire Protection Association and recognized as an American National Standard. At the state level, propane use is usually regulated by the State Fire Marshall=s Office. However, in some states, there is a separate LP-Gas Board or Commission which regulates the industry. In either event, these agencies have jurisdiction over the safe handling and storage of propane, including employee training, the siting and storage of propane tanks and applicants, and intrastate transportation of propane that is not covered by the U.S. Department of Transportation. As evidenced by the foregoing, much like the power, petroleum, and railroad industries, the propane industry is closely regulated.

7. While the NPGA acknowledges that Petitioners= industries are important to the American public, Petitioners fail to recognize that virtually all industrial and business users could make a similar argument that they are Acritical≡ and Aessential≡ to the continued protection of the life, health, and welfare of the American people and should be included in the suggested Apublic service≡ pool. Instead, the NPGA recommends that the Commission recognize the Petition for Rule Making as what it is -- another indication of

⁸ See Petition at 8-10.

the critical need for additional private wireless spectrum. If the Commission were to allocate additional spectrum for private land mobile use, the Commission would provide the entire private wireless industry with much needed relief.

8. Indeed, such an opportunity has already been presented to the Commission. On April 22, 1998, the Land Mobile Communications Council (LMCC) filed a Petition for Rule Making responding to the private wireless industry=s critical need for spectrum and requesting an allocation of additional spectrum for the private mobile radio services.⁹ The Commission placed the Petition on Public Notice on April 30, 1998.¹⁰ The pleading cycle has closed in this proceeding. Nevertheless, the NPGA would like to take this opportunity to urge the Commission to expeditiously respond to the LMCC=s Petition and to allocate additional spectrum for the private wireless industry. It is the NPGA=s belief that such an action would also go far toward alleviating Petitioners= concerns about the potential for interference with these important industries.

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Dated: January 7, 1999

⁹ See Petition for Rule Making Submitted by the Land Mobile Communications Council, dated April 22, 1998.

¹⁰ See *Public Notice*, Office of Public Affairs Reference Operations Division, Petitions for Rulemaking Filed, Report No. 2272 (rel. April 30, 1998).



CERTIFICATE OF SERVICE

I, Laura L. Smith, do hereby certify that on the 7th day of January 1999, I forwarded to the parties listed below a copy of the foregoing Reply Comments of the National Propane Gas Association, by first-class mail, postage pre-paid:

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