



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

EX PARTE OR LATE FILED
FEB 26 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RECEIVED

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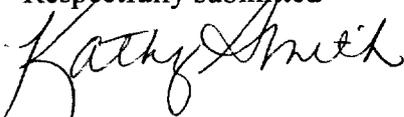
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: DA 04-378, RM-10321, *Wireless Telecommunications Bureau Seeks Comment on MariTel, Inc. Proposal for Shared Use of Maritime VHF Channels 87B and 88B for Automatic Identification Systems*

Dear Ms. Dortch:

Please find enclosed an original and two (2) copies of the letter from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, with a copy to Edmond J. Thomas, Chief, Office of Engineering and Technology. Per the public notice, copies were also mailed to Qualex International, Inc., Maria Ringold of the Consumer and Governmental Affairs Bureau, Reference Information Center, and Tim Maguire and Jeffrey Tobias of the Wireless Telecommunications Bureau, Public Safety Wireless Division.

Please direct any questions you may have to the undersigned.

Respectfully submitted

Kathy Smith
Chief Counsel

Enclosures

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UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

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Mr. John B. Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: DA 04-378, RM-10321, Wireless Telecommunications Bureau Seeks Comment on MariTel, Inc. Proposal for Shared Use of Maritime VHF Channels 87B and 88B for Automatic Identification Systems

Dear Mr. Muleta:

The National Telecommunications and Information Administration (NTIA) manages and authorizes the Federal Government's use of radio frequency spectrum. The Federal Communications Commission (Commission) recently issued a Public Notice seeking comments on a MariTEL, Inc. (Maritel) proposal for sharing use of maritime VHF Channels 87B and 88B for automatic identification systems (AIS) (*Maritel Sharing Proposal*). As set forth herein and in the attached letters from the U.S. Department of Transportation, on behalf of the Saint Lawrence Seaway Development Corporation (SLSDC) and the U.S. Department of Homeland Security, on behalf of the U.S. Coast Guard (Coast Guard), NTIA urges the Commission to deny Maritel's most recent proposal.

The background in this matter is undisputed. Maritel is the licensee for certain VHF public coast (VPC) geographic areas. In 2001, the Coast Guard, pursuant to Commission regulations, entered into an agreement with Maritel designating VHF channels 87 A/B for AIS use. Subsequently, NTIA authorized the Coast Guard to use Channel 88B, a government frequency, for AIS. As a result, the Commission released public notices announcing that ship station AIS operations on maritime VHF channels 87 and 88 would be deemed to be authorized under existing ship licenses, and establishing the procedures for certification of AIS equipment.¹ In March 2003, Maritel requested an extension of its construction deadline and notified the Commission that it was abandoning plans to construct a voice communications network in favor

¹Wireless Telecommunications Bureau Announces Use of An Additional Frequency for the United States Coast Guard's Ports and Waterways Safety System, *Public Notice*, 17 FCC Rcd 10960 (2002); Applications for Equipment Authorization of Universal Shipborne Automatic Identification Systems To Be Coordinated with the U.S. Coast Guard to Ensure Homeland Security, *Public Notice*, 17 FCC Rcd 11983 (2002).

of a data network.² In April 2003, Maritel filed a petition for declaratory ruling that it holds the exclusive right to operate on VHF maritime Channel 88A and 88B.³ In May 2003, Maritel terminated the MOA with the Coast Guard.

Following its termination of the MOA, Maritel filed an Emergency Petition seeking a declaratory ruling from the Commission that shipborne AIS transmitter may not operate on Channel 87B or Channel 88B.⁴ Less than a month after filing its emergency petition, Maritel filed a proposal which stated that it would agree to the dedication of Channels 87B and 88B for nationwide AIS use *if* Maritel were designated as the AIS frequency coordinator and could charge fees to all AIS users.⁵ In the face of widespread opposition to that proposal, Maritel has produced yet another alternative (which itself supercedes a similar proposal filed only days earlier). This proposal now supports NTIA's request for the reallocation of Channels 87B and 88B for AIS, but subject to certain restrictions regarding AIS transmissions. All of these proposals have one thing in common: they seek to derive profit from Maritel's regulatory obligation to provide AIS channels to the Coast Guard.

None of Maritel's proposals to date have acknowledged the regulatory requirement to make two channels available for AIS in the maritime band.⁶ The regulations provided that Maritel would negotiate with the Coast Guard to designate these channels, but in the event of a failure, the Commission would upon request designate frequencies for AIS. Such a failure clearly occurred when Maritel unilaterally terminated the MOA with the Coast Guard. Maritel's obligation to make frequencies available through negotiations, or upon failure of that process, the FCC's obligation to designate such frequencies, is not conditioned upon payment to Maritel from

²See Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Station Geographic Area Licenses, *Public Notice* (released May 5, 2003).

³See Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Petition for Declaratory Ruling Regarding the use of Maritime VHF Channel 88, *Public Notice*, DA 03-2223 (released July 9, 2003).

⁴See MariTEL Emergency Petition for Declaratory Ruling (filed October 15, 2003).

⁵See Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Proposal to Serve as Automatic Identification System (AIS) Frequency Coordinator, *Public Notice*, DA 03-3669 (released November 19, 2003). Although the Wireless Bureau has not sought public comment on all of Maritel's proposals, NTIA is aware of other proposals that seek similar benefits to Maritel for making frequencies available for AIS.

⁶See *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order. PR Dkt. No. 92-257, RM-7956, RM-8031, RM-8352, 13 F.C.C. Rcd 19853 (1998).

the Coast Guard, the U.S. Government, the shipping industry, port authorities or anyone else in the maritime or public safety community.

In the past year, the Commission has been inundated with petitions and proposals from Maritel that collectively represent a desperate attempt to recover from its own bad business decisions. *Maritel's Sharing Proposal* at issue here is no exception. Maritel admits that it has failed in providing the business for which it purchased the licenses, and is now speculating that it will be able to provide another service. In pursuit of this speculative business endeavor, Maritel expects the Commission to provide compensation for otherwise meeting its clear regulatory obligation to make frequencies available for AIS. This latest proposal is simply another attempt by Maritel to coerce the government into creating an environment in which Maritel can make a profit from its regulatory responsibilities.⁷

More importantly, *Maritel's Sharing Proposal* represents a serious conflict between its particular financial interest and the public interest involved in protecting homeland security and maritime safety. The importance of AIS cannot be overstated. In recent filings with the Commission, NTIA, the Coast Guard, and the Saint Lawrence Seaway Development Corporation have detailed the importance of making these channels available for AIS. The international community, through the 1997 World Radiocommunications Conference, designated the use of Channels 87B and 88B for AIS use on the high seas. Congress recently required certain ships to be equipped with and to operate AIS systems pursuant to Coast Guard regulations.⁸ Clearly, U.S. homeland security and maritime safety interests are not only consistent with Maritel's longstanding obligations, but they are not properly subject to Maritel's repeated attempts to extract a profit therefrom.

While the Commission initially considered and rejected designating specific channels for AIS, it stated that if good faith negotiations failed in selecting AIS channels, the Commission would revisit the issue. Good faith negotiations between Maritel and the Coast Guard did not work. There is no indication that the terms of *Maritel's Sharing Proposal* would work. Negotiations have failed to bring about certainty regarding the use of Channels 87 and 88. Acceptance of this proposal does not guarantee that the parties will not be before the Commission again regarding the use of these channels. Because the Commission stated that it

⁷A more disturbing aspect of *Maritel's Sharing Proposal* is its attempt to impose limitations on not only the use of Channel 87B, but Channel 88B as well - - a government frequency. In essence, Maritel, through its proposal, is attempting to become a regulator of government and non-government radio frequency spectrum. Moreover, Maritel has not shown why it, as opposed to any other licensee, should have the exclusive right to share Channels 87 and 88 with the Coast Guard.

⁸See Maritime Transportation Security Act of 2002, Pub. L. 107-295, § 102, 116 Stat. 2064, 2068-2085 (2002).

would revisit this issue if negotiations failed, NTIA filed its Petition for Rulemaking⁹, asking the Commission to revisit the issue and to designate Channel 87B and 88B for AIS.

NTIA again urges the Commission to work with NTIA to allocate Channels 87B and 88B for exclusive AIS operations. In that regard NTIA urges the Commission to deny *Maritel's Sharing Proposal* and to reject all other attempts by Maritel to encumber these frequencies.

Sincerely,



Fredrick R. Wentland
Associate Administrator
Office of Spectrum Management

Enclosures

cc: Edmond J. Thomas, Chief, Office of Engineering and Technology

⁹See Letter to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration (filed Oct. 24, 2003); *see also* Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, DA 03-3585 (rel. Nov. 7, 2003).



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

February 27, 2004

Mr. Frederick R. Wentland
Associate Administrator, Office of Spectrum Management
National Telecommunications and Information Administration
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: DA 04-378
RM-10321

Dear Mr. Wentland:

In this proceeding the Wireless Telecommunications Bureau ("Bureau") has sought comment on a proposal by MariTEL, Inc. ("MariTEL") to share the use of maritime VHF channels 87B and 88B for Automatic Identification System ("AIS") purposes. DA 04-378 (February 13, 2004) ("Public Notice"). The United States Department of Transportation ("DOT" or "Department"), on behalf of the St. Lawrence Seaway Development Corporation ("SLSDC"), objects to the proposal for the reasons discussed below. We appreciate your offer to file these comments with the Bureau on behalf of DOT. We also endorse the comments filed contemporaneously herewith by the National Telecommunications and Information Administration ("NTIA").

MariTEL has proposed to share these two channels with the United States Coast Guard ("Coast Guard") and ship stations for AIS purposes -- no other entity would be permitted to receive or use AIS transmissions. The Department opposes this proposal because it utterly fails to recognize the SLSDC and its Canadian counterpart, the St. Lawrence Seaway Management Corporation ("SLSMC"), as legitimate users of channels 87B and 88B. The proposal is thus inimical to the SLSDC and to the continued operation of the existing AIS network along the St. Lawrence Seaway.

As the Bureau knows,¹ the Seaway is a totally integrated operation between the U.S. and Canada. Since the Seaway opened in 1959, the SLSDC and SLSMC have worked together to ensure safe and efficient maritime transit of the waterway. The AIS network

^{1/} The Bureau is clearly aware of the ongoing dispute between MariTEL and various federal agencies concerning the use of these two channels. Public Notice at 1 and note 1. We will not here repeat yet again the details of this dispute, but will simply reference other pending proceedings.

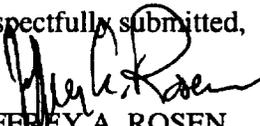
established and maintained by these agencies is a bi-national system operated by the SLSDC and SLSMC as part of their integrated vessel traffic services. The AIS network in fact not only allows these agencies to maintain even higher levels of safety and efficiency, but more recently it has also become an integral part of the homeland security missions of the Department and the Coast Guard. *See* the Maritime Transportation Security Act of 2002, P.L. No. 107-295, § 102 (*codified at* 46 U.S.C. § 70114).

DOT has previously noted in related pleadings before the Federal Communications Commission and the Bureau that the NTIA has permanently authorized the SLSDC to use channel 87B, and that channel 88B has always been a federal government frequency.² The SLSMC operates on these same channels under assignment from Industry Canada. Id. These circumstances compel rejection of the MariTEL proposal, which repeatedly identifies the Coast Guard as the sole federal entity entitled to these channels. That MariTEL in a footnote “agrees to allow” use by the SLSDC is no answer, for it strongly suggests that such use would be at MariTEL’s sufferance rather than according to the SLSDC’s independent and superior authority.

MariTEL’s offer to let Canada use these channels in the same footnote is similarly unacceptable. As noted, like the Seaway itself the AIS network in place is a joint operation between the U.S. and Canada. The shared, on-shore station towers used jointly by the SLSDC and SLSMC operational centers are located in both countries. Use of channels 87B and 88B for this purpose on the international Seaway was worked out by the neighboring sovereigns and use by vessels transiting the Seaway is now mandatory under the joint Seaway regulations. *See* 33 C.F.R. § 401.20. That arrangement and Canada’s continued use of these channels are not and never were subject to securing MariTEL’s permission.

The Department therefore opposes the instant MariTEL proposal and any other proposal for use of these channels whereby the Seaway’s international AIS operations would be subject to preemption, interruption, or interference.

Respectfully submitted,


JEFFREY A. ROSEN
General Counsel

^{2/} *See, e.g.*, Letter to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Frederick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA (October 24, 2003).

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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25 February 2004
2410

Mr. Fredrick R. Wentland
Associate Administrator, Office of Spectrum Management
National Telecommunications and Information Administration
Herbert C. Hoover Building
14th and Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Wentland:

Thank you for your continuing efforts to assist the Coast Guard in obtaining internationally recognized radio spectrum required for the implementation of the universal shipborne Automatic Identification System (AIS). As the agency tasked by Congress with developing AIS carriage regulations, the Coast Guard has a duty to implement AIS carriage requirements consistent with the Maritime Transportation Safety Act and international standards and at the lowest possible cost to AIS users, vessel operators, and the American taxpayer. This letter responds to the recently issued Federal Communications Commission Public Notice DA 04-378 seeking comments on a MariTEL, Inc. proposal for sharing use of maritime VHF Channels 87B and 88B AIS. As with its prior proposals, MariTEL's latest proposal fails to fully acknowledge its regulatory obligations. The proposal also sets unacceptable limitations upon AIS and Vessel Traffic System (VTS) operations. Seamless installation of AIS is vital to the continued enhancement of maritime safety and homeland security. The Coast Guard therefore urges the FCC to deny MariTEL's latest proposal.

After terminating its Memorandum of Agreement with the Coast Guard that set aside Channel 87 for AIS use, MariTEL has submitted several proposals by which it would, to varying degrees, "authorize" AIS transmissions on Channel 87. In return, MariTEL would be able to share the use of Channel 87, would play some quasi-regulatory role in connection with AIS, and would also be provided with some exclusive opportunity to extract commercial benefit from the government mandated AIS carriage requirements. All of these proposals fail to properly acknowledge MariTEL's regulatory requirements to make some spectrum available for AIS. By also seeking certain exclusive rights to exploit AIS carriage requirements for commercial gain, MariTEL's proposals not only ignore its obligations, they seek greater rights than MariTEL's licenses provide. MariTEL may have licenses to use spectrum, but it has no "license" to use AIS. MariTEL's proposals are therefore unacceptable. As previously stated, the Coast Guard believes the proper course of action is for the FCC to act upon the National Telecommunications and Information Administration's (NTIA) administrative Petition for Rulemaking in this matter.¹

¹ See Letter to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission from Fredrick R. Wentland, Associate Administrator, Office of

In addition to the above stated reasons for rejecting each of MariTEL's proposals, the current proposal should be rejected because it creates unacceptable encumbrances on the development of AIS and VTS thereby harming both maritime safety and national security. MariTEL proposes that the FCC adopt regulations preventing anyone other than MariTEL, the Coast Guard, and shipborne stations from receiving AIS transmissions. MariTEL specifically stated that "marine exchanges, port authorities, fleet operators, state and local government agencies, and non-USCG federal government entities" would be forbidden from receiving or using AIS information.² The U.S. Coast Guard and the Marine Exchange in the Ports of Los Angeles and Long Beach have operated a vessel traffic system jointly for years. The Coast Guard also has cooperative arrangements with the maritime community in Tampa Bay, Florida, Charleston, South Carolina, and on the Delaware River. Similar arrangements are being proposed for the Columbia River, in Corpus Christi, Texas, and other ports and waterways. In addition, the Coast Guard and the National Oceanic and Atmospheric Administration's National Data Buoy Center are developing an interagency agreement involving AIS. The Coast Guard also has a Memorandum of Agreement with the Maritime Information Service of North America (MISNA). MISNA is a non-profit maritime organization dedicated to improving the flow of domestic and international commerce by facilitating information exchange. These and other cooperative arrangements in development promote maritime commerce while also improving maritime safety and enhancing national security. If MariTEL's proposal were enacted, all these beneficial arrangements would violate FCC regulations. This would directly conflict with the FCC's determination that setting aside these frequencies for AIS "will enhance the safety of life and property on vessels in United States waters by reducing collisions, groundings, and environmental harm, further effectuating our regulatory goal of fostering the protection of life and property at sea through the use of maritime radio spectrum."³

MariTEL's proposal also fails to recognize Canada and the Saint Lawrence Seaway Development Corporation as legitimate users of Channels 87B and 88B in connection with their jointly operated VTS, a system that includes AIS carriage requirements. In this regard, the Coast Guard endorses the well-developed comments filed contemporaneously herewith by the Department of Transportation.

Finally, MariTEL's request to modify equipment acceptance requirements is not relevant to the issue of frequency allocation.

Spectrum Management, National Telecommunications and Information Administration (filed Oct. 24, 2003); *see also Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B*, DA 03-3585 (rel. Nov. 7, 2003).

² MariTEL Proposal to Designate and Share Channels 87B and 88B for AIS at 2.

³ *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order (hereinafter, Third R&O), PR Dkt. No. 92-257, RM-7956, 8031, 8352, 13 F.C.C. Rcd. 19853 (released July 9, 1998) ¶ 48.

We ask that the NTIA forward these comments to the FCC in conjunction with any comments the NTIA may provide directly or on behalf of other government agencies.

Again, thank you for your continued assistance to the Coast Guard.

Sincerely

A handwritten signature in black ink, appearing to read "C. I. Pearson". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

C. I. PEARSON
Rear Admiral
U.S. Coast Guard
By direction

Enclosure

Copy: Kathy Smith, NTIA Chief Counsel
Tyler Duvall, DOT Deputy Assistant Secretary