

**MINTZ LEVIN
COHN FERRIS
GLOVSKY AND
POPEO PC**

*Boston
Washington
Reston
New York
New Haven
Los Angeles
London*

*701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com*

Russell H. Fox

**Direct dial 202 434 7483
rfox@mintz.com**

June 16, 2004

FILED ELECTRONICALLY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: RM-10821; 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; NOTICE OF EX PARTE
PRESENTATION;**

**PR Docket No. 92-257; Amendment of the Commission's Rules Concerning
Maritime Communications; NOTICE OF EX PARTE PRESENTATION;**

**ET RM-10743; Commission's Rules to Promote the Use of VHF Public Coast
Station Frequencies; NOTICE OF EX PARTE PRESENTATION.**

Dear Ms. Dortch:

Pursuant to the provisions of Section 1.1206 of the rules and regulations of the Federal Communications Commission ("FCC"), MariTEL, Inc. hereby submits this letter notifying the FCC of its *ex parte* presentation in the above-referenced dockets. On June 15, 2004, Dan Smith, President and Chief Executive Officer of MariTEL, Inc. sent a written *ex parte* letter to Catherine Seidel, Deputy Chief of the Wireless Telecommunications Bureau. The purpose of the letter was to outline the commercial implications to MariTEL of the National Telecommunications and Information Administration's ("NTIA's") petition, which asks the FCC to redesignate VHF channels 87B and 88B nationwide for Automatic Identification Systems ("AIS"). A copy of the written *ex parte* letter is attached.

Marlene H. Dortch

June 16, 2004

Page 2

Should there be any questions regarding this matter, please contact the undersigned directly.

Cordially yours,

/s/ Russell H. Fox

Russell H. Fox

Attachment

cc: C.I. Pearson (via FedEx)
Frederick R. Wentland (via FedEx)
Kathy D. Smith (via FedEx)
John Muleta (via e-mail)
D'Wana Terry (via e-mail)
Catherine Seidel (via e-mail)
Tim Maguire (via e-mail)
Scot Stone (via e-mail)
Jeffrey Tobias (via e-mail)



June 15, 2004

Catherine W. Seidel
Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Commercial Implications of NTIA Petition to MariTEL

Dear Cathy,

We appreciate the attention the Wireless Telecommunications Bureau has provided to both our concerns and proposed solutions in the *AIS Frequency Controversy* proceedings. There have already been significant discussions regarding the policy and technical issues raised by the petition submitted by the National Telecommunications and Information Administration (“NTIA”) asking the FCC to redesignate VHF channels 87B and 88B nationwide for Automatic Identification Systems (“AIS”) (the “NTIA” Petition”) but, heretofore, there has not been a clear focus on the commercial implications of that petition to MariTEL. Therefore, we wanted to take the opportunity of this letter to ensure the Commission is keenly aware of those commercial implications as a result of a loss of bandwidth, AIS interference and the violation of auctioned spectrum rights.

Loss of Bandwidth

The approval of the NTIA Petition will result in the loss of one of nine¹ unique² non-offset 25 kHz duplex VHF channel pairs on a nationwide basis. The NTIA petition has a significantly greater impact to MariTEL’s commercial operations than the USCG’s use of up to two narrowband off set duplex channels (“Interstitials”) for ship-shore communications in Ports and Waterways Safety System (“PAWSS”) Vessel Traffic Services (“VTS”) areas. While, from an absolute bandwidth perspective, it may seem as if giving up two Interstitials would result in a greater loss than one simplex wide band channel, both engineers and policy makers should quickly dismiss this crafty approach.

The Commission recognized the harmful commercial implications of losing one 25 kHz channel by stating that “setting aside Channel 87B would harm maritime VPC licensees’ ability to construct wide-area systems by leaving most with no more than eight broadband

¹ Maritime VPC licenses have rights to ten 25 kHz channels in VPC’s 1, 5 and 7 subject to border coordination rules.

² VPC channels are unique because they have 4.6 MHz of separation between transmit and receive frequencies, are easily used with VHF public safety spectrum, and are the likely location for future internationally interoperable VHF maritime technologies.



*channels*³. Further, the loss of one broadband channel may preclude MariTEL from employing systems requiring channel re-use plans⁴ and may necessitate the use of less attractive simplex or simulcast systems⁵. The commercial implications to MariTEL are the reduction in capacity and the requirement to provision services at a higher cost that are less competitive and less valuable.

The FCC rules adopted immediately prior to Auction 20 specifically ensured prospective licensees that the successful bidder would have ***complete utility of all its licensed 25 kHz channels without any diminution of those channels due to an obligation to the Coast Guard for AIS***⁶. Worse than proposing to take any 25 kHz wide simplex channels, NTIA proposes to take channel 87B from MariTEL and preclude MariTEL's use of that spectrum. The ***Commission uniquely empowered VPC licensees to enable the use of channel 87 whether for traditional telephony services or internationally interoperable AIS communications***. MariTEL based the submission of its winning bid on this commitment. It is unconscionable that MariTEL's loss should provide such tremendous value⁷ to the Coast Guard and private industry by using our licensed spectrum without just compensation.

The NTIA Petition seeks to undermine the commercial value of the VPC spectrum by shifting the AIS obligation from one that is almost imperceptible to one that is exhaustively destructive.

Interference Caused by AIS Simplex Transmission

MariTEL purchased the right to operate VPC spectrum in the duplex mode consistent with FCC rules. The NTIA Petition to operate channel 87B in the simplex mode will cause significant and widespread interference ("AIS Interference") that negatively impacts all of MariTEL's channels and other channels as far away as 6 MHz. Studies performed by inCode⁸, NTIA⁹ and the Department of Defense's Joint Spectrum Center¹⁰ are in agreement that the only way to eliminate AIS Interference is to remove the transponder from the vessel by distances greater than one mile. Due to the wide spread, destructive nature of AIS Interference, MariTEL's auctioned VPC

³ Third Report and Order and Memorandum Opinion and Order, PR Docket No. 92-257, 13 FCC Rcd 19853 (1998) ("Third Report and Order"), at ¶ 46-49.

⁴ As an example, channels A and D are used at site #1, channels B and E are used at site #2, and channels C and F are used at site #3 for a total of six channels with only two channels used at each site. In this example, the loss of one channel on a nationwide basis would harm the system operator's ability to deploy the second channel at all sites.

⁵ Simplex systems, not authorized by the FCC for use with VPC spectrum, provide reduced network capacity and functionality. Simulcast systems, designed to overcome spectrum shortages, are significantly more costly and complex to own and operate and still do not overcome a reduction in network capacity.

⁶ VPC licensees have the ability to deploy transmitters throughout their licensed area using all 25 kHz channels and must only protect incumbent coast and Part 90 stations granted licenses prior to the auction.

⁷ The USCG is expected to save millions of dollars in capital and operating expenses but equipment vendors, private coast stations and fleet operators stand to realize the most value at MariTEL's expense by enabling greater than one million Class B transponders to be sold in the United States at prices ranging from several hundred dollars to greater than one thousand dollars.

⁸ inCode Report, Interference Considerations of Simplex Operation 1371 AIS Technologies With Respect to MariTEL's Spectrum (Updated to Include VHF Data Transmission Devices) Revised on January 14, 2004.

⁹ NTIA Report 00-376, *Electromagnetic Compatibility Between Marine Automatic Identification and Public Correspondence Systems in the Maritime Mobile VHF Band*.

¹⁰ See Letter from Frederick Wentland, NTIA dated February 26, 2004 to Federal Communications Commission, transmitting JSC Report.



spectrum will, in effect, become the “AIS band” and use of VPC spectrum will be forever tainted.

MariTEL’s recent letter¹¹ to Mr. Muleta clearly demonstrates that ubiquitous AIS Interference is significantly more impacting than pre-existing, isolated RF anomalies and that new technology must be developed to allow AIS and maritime VPC services to co-exist on vessels. MariTEL fully understands that it has an inherent obligation to overcome isolated RF anomalies and has done so while providing VHF ship-shore radio telephone services but does not consider its obligation to extend to overcoming newly deployed Federal Government sources of interference¹².

The USCG’s introduction of AIS Interference damages MariTEL’s ability to provide commercially viable maritime services to any vessel equipped with an AIS transponder or to any vessel operating in close proximity to an AIS device. The USCG’s mandatory carriage requirement of AIS transponders covering 15,000 of MariTEL’s most economically attractive customers and the likely adoption of future low cost “Class B” transponders by several hundreds of thousands of additional vessels effectively eliminates maritime services for these vessels.

The Federal Government has an obligation to ***“take all reasonable measures to ensure that such systems will neither cause nor receive harmful interference to or from other authorized users when placed in their intended operational environments”***¹³ If the USCG is allowed to ignore this obligation, the FCC will have set a precedent that commercially licensed spectrum will always be subject to debilitating interference from the introduction of Federal Government radio systems.

Violation of Auctioned Spectrum Rights

In comparison to the loss of bandwidth and harmful AIS Interference, the violation of our auctioned spectrum rights is by far the most damaging. MariTEL based its valuation and acquisition of VPC licenses on the ability to use all its licensed 25 kHz channels and the ability to empower AIS channel configurations that use other than “up to two narrowband offset duplex channel pairs”.

We recognize that some, not intimately familiar with these issues, have fallen prey to the Coast Guard’s noticeably changed position that MariTEL has “an obligation to accommodate AIS” and, because the FCC has the right to “revisit the issue and select the channels and locations” used for PAWSS, that right can somehow be construed to reference other than Interstitials. We are confident that anyone who objectively reads paragraphs 48 and 49 of the FCC’s 3rd Report and Order in the Docket No. 92-257 proceeding, in addition to FCC rule 80.371(c)(3), will conclude that the Commission’s ability to revisit the issue and select the channels and locations is only intended to settle which Interstitials – not wideband simplex channels -- would be used

¹¹ Letter from Dan Smith, MariTEL dated May 14, 2004 to Federal Communications Commission, response to NTIA’s submittal of the JSC Report.

¹² Development of technology to overcome simplex AIS interference is estimated to cost MariTEL \$10-12 million over the life of its license.

¹³ *NTIA Manual of Regulations & Procedures for Federal Radio Frequency Management* (May 2003 Edition, January 2004 Revisions) (“Red Book”), Chapter 10.1.1 Avoiding Interference.



for AIS . Although the intent may have been to accommodate the Coast Guard's need for AIS channels, it certainly was limited to Interstitials and not to create an open-ended obligation that could range from one, two, three or all of the VPC licensee's narrowband or wideband channels.

We understand, as you stated in our previous meeting, the needs and circumstances for AIS have changed but MariTEL's rights guaranteed by FCC rule should not be changed. Any unilateral change to our rights as proposed by the NTIA Petition will create a disastrous loss of confidence by prospective customers, partners, vendors, and investors and set a precedent that will encourage the Coast Guard's inappropriate actions to seize commercial spectrum auctioned to MariTEL. Beginning December 8, 2002¹⁴, the USCG has on several occasions alluded to their desire to reclaim auctioned VPC spectrum by invoking *eminent domain* and causing MariTEL's license to be revoked. However, not until the recent USCG presentation at RTCM has their intent to reclaim auctioned spectrum been made public. Approval of the NTIA Petition will embolden the USCG and their desire to usurp the FCC's authority by causing this spectrum to be held in abeyance for the international maritime community.¹⁵

Summary

Approval of the NTIA Petition will take a substantial amount of uniquely valuable spectrum, preclude the provisioning of maritime services due to AIS Interference, and destroy all confidence that the FCC will protect MariTEL's rights to enable the best and highest utilization of its licensed spectrum. We are hopeful you now have a more clear understanding of the commercial implications associated with implementing the NTIA Petition's request to strip MariTEL of its rights to channel 87B for implementation of a Federal Government radio system that significantly damages the commercial utility of our licensed spectrum. These implications, in part or in aggregate, only serve to de-value VPC spectrum to facilitate the USCG's stated plan to reacquire auctioned spectrum. As we have demonstrated in the past, we stand ready to work to enable the use of our spectrum for AIS while finding a solution that does not destroy our value.

Sincerely,

A handwritten signature in black ink that reads "Dan Smith".

Dan Smith
President & CEO

cc: D'wana Terry (By e-mail)
Scot Stone (By e-mail)
Tim Maguire (By e-mail)
Jeffery Tobias (By e-mail)
Russell Fox (By e-mail)

¹⁴ MariTEL and USCG meeting at USCG Headquarters on December 8, 2002.

¹⁵ Joe Hersey, USCG, *History, Current State, and Future of the VHF Maritime Spectrum, the Maritime Community's Most Critical Spectrum Resource* (Radio Technical Commission for Maritime Services annual conference, May 17, 2004)