

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

In the Matter of)	
)	
Amendment of the Commission's Rules)	
Regarding Maritime Automatic)	WT Docket No. 04-344
Identification Systems)	
)	
Petition for Rule Making Filed by)	RM-10821
National Telecommunications and)	
Information Administration)	
)	
Emergency Petition for Declaratory)	
Ruling Filed by MariTEL, Inc.)	

REPLY COMMENTS OF MARITEL, INC.

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January 31, 2005

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SUMMARY

The majority of comments submitted in response to the *Notice* ignore the central issue raised in this proceeding. The central issue – the only material issue – in this proceeding is how to address the devastating impact that the designation of channel 87B for Automatic Identification Systems (“AIS”) will have on MariTEL and other incumbent VHF Public Coast (“VPC”) licensees. The Federal Communications Commission (“FCC”) must consider, therefore, not only the benefits of AIS in the configuration proposed by the National Telecommunications and Information Administration (“NTIA”) and the United States Coast Guard (“USCG”), but also the detrimental impact of the use of AIS in that configuration and the potential use of AIS in alternative configurations. If the FCC determines (as it need not) that channel 87B should be designated for AIS operations, it must undertake the procedures required by Congress in Section 316 of the Communications Act of 1934, as amended, to modify MariTEL’s licenses and to compensate MariTEL. Until the FCC initiates the required processes, it cannot proceed with its proposed modification of MariTEL’s licenses.

Implementation of the AIS plan as suggested in the *Notice* would be illegal under the Communications Act, would violate the most basic principles of due process, would be fundamentally inconsistent with the manner in which the FCC has licensed VPC spectrum, and would cause destructive interference to MariTEL’s VPC service, thereby rendering the plan an unconstitutional taking without just compensation. By adopting the proposal in the *Notice*, the FCC would establish the dangerous precedent that it may reallocate auctioned spectrum and introduce ruinous interference, at any time, to an auction winner’s radiofrequency environment without providing any compensation to the rightful licensee. Such a reallocation cannot be disguised as a simple modification of the rules; it would be a substantial modification of

MariTEL's licenses that can only be accomplished under the procedures set forth in Section 316 of the Act.

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MariTEL, Inc. (“MariTEL”), by its attorneys and pursuant to the provisions of Section 1.415(c) of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) and the invitation extended by the FCC in the *Notice of Proposed Rule Making* (“*Notice*”) in the above referenced proceeding,^{1/} hereby submits its comments in reply to the initial comments of other parties in this proceeding. Those comments relate to the FCC’s proposal to reallocate the frequency assignment 161.975 MHz (VHF channel 87B), licensed to MariTEL, for use by Automatic Identification Systems (“AIS”).

I. INTRODUCTION

The majority of comments submitted in response to the *Notice* ignore the central issue raised in this proceeding. MariTEL does not question the United States Coast Guard’s

^{1/} *Amendment of the Commission’s Rules Regarding Maritime Automated Identification Systems; Petition For Rule Making Filed by National Telecommunications and Information Administration; Emergency Petition for Declaratory Ruling Filed by MariTEL, Inc., Memorandum Opinion and Order and Notice of Proposed Rule Making*, 19 FCC Rcd 20071 (2004) (“*Notice*”).

(“USCG”) need for AIS capabilities. Therefore, the comments of the National Telecommunications and Information Administration (“NTIA”) and others designed to demonstrate the importance of marine domain awareness^{2/} are beside the point. The central issue – the only material issue – in this proceeding is how to address the devastating impact that the designation of channel 87B for AIS will have on MariTEL and other incumbent VHF Public Coast (“VPC”) licensees. The FCC must consider, therefore, not only the benefits of AIS in the configuration proposed by the NTIA and the USCG, but also the detrimental impact of the use of AIS in that configuration and the potential use of AIS in alternative configurations. If the FCC nevertheless determines to proceed as proposed, it must undertake the procedural steps required by the Communications Act to protect MariTEL from interference on its remaining channels and compensate MariTEL for the loss of the capabilities it secured at auction.

Regrettably, the NTIA, acting on the USCG’s behalf, does not responsibly address these issues or, even in the face of clear evidence, admit that they exist. While marine domain awareness capabilities are certainly important, principles of due process are equally important. NTIA cannot simply discard the fundamental underpinnings of constitutional democracy as a quick and convenient way to fulfill its mission and the mission of the USCG. If the FCC determines (as it need not) that channel 87B should be designated for AIS operations, it must undertake the procedures required by Congress in Section 316 of the Communications Act of 1934, as amended, to modify MariTEL’s licenses. Until the FCC initiates the required processes, it cannot proceed with its proposed modification of MariTEL’s licenses.

Even if the FCC concludes that its proposal (which would both reallocate channel 87B and introduce destructive interference to the VPC spectrum) does not constitute a modification of

^{2/} See, e.g., Comments of NTIA at 3-4; Comments of Nauticast Shiffsnavigation System, AG, at 2-3; Comments of Radio Technical Commission for Maritime Services at 2.

MariTEL's licenses, the Commission should find that the NTIA's plan is contrary to the public interest. The NTIA's plan is fundamentally inconsistent with the manner in which the FCC has licensed VPC spectrum, and will cause destructive interference to MariTEL's VPC service. By adopting the proposal in the *Notice*, the FCC will establish the dangerous precedent that it may introduce ruinous interference, at any time, to an auction winner's radiofrequency environment without providing any compensation. The proposed action is particularly irresponsible because it ignores at least one viable alternative to taking MariTEL's spectrum without compensation. Therefore, MariTEL believes that the FCC should not, as a matter of policy, proceed with its plan to designate channel 87B for AIS use on an exclusive basis. However, if the FCC determines to proceed, MariTEL hereby reiterates its request that the FCC conduct the processes envisioned by Section 316 before it reallocates MariTEL's channel 87B for AIS.

II. DISCUSSION

A. The Benefits of Wideband and Simplex Operations are not at Issue

The NTIA's comments assert that the use of wideband channels in a simplex mode would better enable the USCG to perform its marine domain awareness functions.^{3/} MariTEL does not dispute that use of wideband simplex channels may allow the USCG to better perform marine domain awareness functions. However, as noted above, the FCC must weigh these considerations against other means by which the USCG can perform its mission. If there is no other means by which AIS can be introduced, then the FCC must take the correct procedural measures to modify MariTEL's license, enact measures that will protect MariTEL from harmful interference, and/or compensate MariTEL for the loss of the capacity it acquired at auction.

^{3/} Comments of NTIA at 3-9.

Moreover, the NTIA's reliance on the USCG's new mission for channel 87B highlights MariTEL's frustration with the USCG's ever-changing plans, and conclusively demonstrates that the FCC proposes to modify MariTEL's license in a manner inconsistent with the regulatory scheme under which MariTEL purchased its authorizations in the first instance. In particular, the fact that the use of narrowband AIS channels is "limited at long distances"^{4/} was well understood prior to the FCC's auction of the VPC spectrum and would have logically been taken into account when the USCG considered its need for AIS spectrum. However, the NTIA's decision to focus on this fact now, rather than in 1998 (when the FCC decided the issue), is evidence that the USCG's mission has changed. The proposed rules, therefore, are not designed to replicate MariTEL's obligation as an auction winner; rather, they are designed to satisfy a completely different need now identified by the USCG. The difference is significant. This is not, as the FCC suggests, simply a different path to essentially the same result as the FCC contemplated when it originally established a spectrum regime for PAWSS. To the contrary, the Commission's proposal is designed to satisfy a completely different requirement in a completely different manner.

When the FCC initially required that the VPC auction winner should make available up to two 12.5 kHz offset channels available for USCG use, it was clear that such use was intended for incorporation into the Ports and Waterways Safety System ("PAWSS"). According to the USCG itself, the use of duplex 12.5 kHz wide channels would have been appropriate for PAWSS. However, over the course of the past five years, the USCG has continued to change its stated requirements for the channels MariTEL was required to make available under Section 80.371 of the FCC's rules. As MariTEL has noted in the past, this proceeding is designed to

^{4/} Comments of NTIA at 4.

rescue the USCG from its inability to engage in responsible frequency management. MariTEL should not be punished for the USCG's inability to plan for its spectrum needs; however, that will be precisely the outcome if the FCC adopts the proposals contained in the *Notice*.

If the Commission adopts the proposed rules, MariTEL will be required to surrender licensed spectrum and to operate under a completely different regulatory scheme than it originally envisioned when it acquired VPC spectrum at auction. Instead of a scheme in which it is required to make available 12.5 kHz duplex channels, MariTEL would instead be required to give up an entire wideband channel, which the USCG will operate in simplex mode on the “wrong” side of the frequency pair. MariTEL's comments in this proceeding pointed out the benefits of both narrowband and duplex operations.^{5/} Because the proposed rules will create a dramatically different VPC landscape than the one the FCC led MariTEL to envision when it auctioned the spectrum and took millions of dollars from MariTEL in exchange, the FCC must conduct procedures under Section 316 of the Act.^{6/}

B. Class B Devices are no Justification for the Proposed Rules

The NTIA argues that channel 87B must be dedicated for AIS operations in a wideband simplex format because so-called Class B AIS devices are designed to operate exclusively on B-side wideband simplex channels. The NTIA notes that these Class B transmitters are intended to be low-cost devices for recreational vessels and that the USCG wishes to encourage the proliferation of Class B devices. It argues that a change in the technical characteristics would increase the cost of the devices and frustrate their wide deployment on recreational vessels.

^{5/} Comments of MariTEL at 11-13.

^{6/} As MariTEL notes below, the VPC spectrum landscape is further polluted by the use of AIS technology (in addition to unanticipated wideband simplex operations). This additional source of destructive interference also supports MariTEL's contention that the Commission's proposal constitutes a modification of its authorization, requiring the processes specified in Section 316 of the Act.

The NTIA's argument is a self-fulfilling prophecy. It is the USCG that, to date, has permitted international standards bodies to adopt the technical characteristics that now "require" the designation of channel 87B for AIS use on a wideband simplex basis. If the USCG had been forward-thinking and executed its duties responsibly, it could have prevented international standards-setting organizations from adopting specifications for Class B devices that relied on a scheme – wide band simplex channels – that were not in place in the United States.^{7/}

The USCG's lack of attention to the consistency of Class B devices with the U.S. regulatory scheme is evidenced by the fact that the Class B AIS emissions mask is significantly more harmful to VPC operations than the emissions mask adopted by the Commission for other AIS devices.^{8/} Further, because of the harmful interference that will be caused by AIS operations, as demonstrated below, the USCG's objective to aggressively implement Class B AIS technology in the U.S. will reduce the number of vessels that can effectively take MariTEL services. NTIA should not, therefore, be permitted to rely on the possibility that non-compliant Class B devices may one day be introduced in support of its argument that AIS systems can only operate on wideband simplex channels.

In fact, it is precisely this "shoot now, aim later" process that forced MariTEL to terminate its Memorandum of Agreement ("MOA") with the USCG in the first instance. The USCG has consistently plodded ahead with AIS implementation without regard to the necessary

^{7/} MariTEL pointed out to the USCG in early 2003 that Class B devices would have only simplex capabilities and requested the USCG to object to the IEC Class B design as inconsistent with U.S. spectrum policy.

^{8/} MariTEL recognizes that the Class B device standard has not yet been finalized. The current Class B specification considers an emissions mask 10dB worse than the Commission's current AIS emissions mask, specifically to keep the cost of Class B units low for more widespread adoption.

spectrum assets.^{9/} MariTEL was required to terminate the MOA because the USCG planned to proceed with the implementation of AIS in a way that was fundamentally inconsistent with both the MOA and the Commission's rules.^{10/} The USCG's actions with respect to Class B devices are further evidence of this approach.

C. AIS Operations will Destroy VPC System Performance

The NTIA and others attempt to demonstrate that AIS operations will not impact VPC system performance. NTIA relies on the JSC Report to support its conclusions.^{11/} However, reliance on the JSC Report is premature and has been demonstrated to be incorrect in any case.^{12/} First, as IP MobileNet, a premiere developer of wireless public safety data products, notes, “[u]ninterrupted data communications on channels adjacent and adjoining to AIS transmissions cannot be guaranteed because of high power into the receiver” and that “[u]ninterrupted data communications can only be guaranteed when the data receiver is more than 75 kHz away from the AIS transmitter.”^{13/} However, 50% of MariTEL's operations would occur within 75 kHz from an AIS transmitter. Therefore, IP MobileNet's analysis demonstrates that MariTEL, even

^{9/} See Complaint, *MariTEL v. United States Coast Guard et al.*, Civil No. 03-2418 (D.D.C. filed November 21, 2003).

^{10/} Yet, MariTEL was consistently informed by Commission staff that the USCG's actions, violative of the MOA, were of a commercial nature. It is because the USCG cannot achieve what it desires under the MOA that the FCC has been requested to modify MariTEL's obligation as an auction winner. If MariTEL's obligation as an auction winner has not changed, then the FCC should logically inform the USCG to resolve this matter commercially, as it did MariTEL. However, the FCC is not imposing a similar obligation on MariTEL today; it is imposing new obligations not contemplated at the time of the auction.

^{11/} Comments of NTIA at 10-12 (citing JSC report).

^{12/} The JSC report does not specify a technology solution. It is little more than an informed guess that a particular technical approach will mitigate AIS interference. The JSC report does not conclude that its hypothesis is accurate, but suggests further study to determine the viability of the suggested approach. To the best of MariTEL's knowledge, there has been no additional government analysis of the JSC's hypothesis.

^{13/} Comments of IP MobileNet at 1.

with IP MobileNet’s state-of-the-art public safety data system, could not expect to commercially utilize approximately 50% of its licensed channels in close proximity to simplex AIS transmissions. As MariTEL has often noted, it plans to introduce a maritime mobile data service. Based on the input received from IP MobileNet and others, it simply cannot do so on a commercial basis because of the expected impact of simplex AIS transmissions.

Similarly, the comments of RF Neulink point out the flaws of the JSC Report, including the alleged discrepancies between the inCode Report provided by MariTEL and the JSC Report. That alleged discrepancy relates principally to the inCode report’s focus on data communications – the type of communications system that MariTEL expects to introduce. In particular, RF Neulink concluded that “the InCode report adequately represents the expected performance degradation of a wireless data system when packet loss and re-transmission is occurring regularly. Conversely, we find nothing technically substantive in the JSC report that addresses this overriding consideration.”^{14/}

Equally as important, RF Neulink concludes that the two methods that the JSC Report identified to ameliorate AIS interference – forward error correction (“FEC”) and block interleaving – are not effective engineering solutions to mitigate AIS interference.^{15/} In fact, RF Neulink engaged the respected Dorr Engineering firm to validate the very premise – that the use of FEC and block interleaving will mitigate AIS interference – upon which the JSC hypothesis is based and which the NTIA claims is the solution to AIS interference. The tests performed by Dorr Engineering demonstrate conclusively that the theoretical results predicted by the JSC

^{14/} Comments of RF Neulink at 3.

^{15/} *Id.* at 1.

Report are incorrect. In fact, as RF Neulink points out, “[e]ven after losing 50-70% of the channel capacity to error correcting coding, the scheme simply does not work.”^{16/}

Equally significant, as ShipCom points out, simplex AIS installations will typically violate the receiver specifications for installed maritime VHF equipment^{17/} leading to potential permanent damage to the installed base of VHF radios. For this reason alone, simplex AIS interference cannot reasonably be equated with existing forms of interference in the maritime RF environment. MariTEL encourages the Commission to insure that any implementation of AIS accounts for the sensitivities of existing VHF maritime equipment, and to require that impact of AIS on existing equipment does not exceed current receiver specifications.

It is meaningful that, contrary to the NTIA’s repeated claims that its AIS proposal will not cause unduly harmful interference, the two device manufacturers (IP MobileNet and RF Neulink) participating in this proceeding – both with a substantial profit motive to provide devices that operate correctly regardless of the interference environment – agree that their radios will be unable to perform on all of MariTEL’s licensed channels,^{18/} and that others have expressed concerns that existing VHF radios may be permanently damaged in the NTIA’s proposed AIS environment. If device manufacturers agree that the NTIA’s solutions of 1) FEC and block interleaving and/or 2) the use of public safety technologies is not effective to mitigate

^{16/} *Id.* at 3.

^{17/} ShipCom’s comments show that high energy levels from so-called “B-side” simplex transmissions materially fail to comply with both the IEC and RTCM receiver specifications. Comments of ShipCom at 1-2.

^{18/} These manufacturers reach this conclusion despite the fact that the technology they would employ well exceeds the error correction and interleaving “fixes” suggested by NTIA. .

AIS interference, then to whom can MariTEL turn for devices that mitigate AIS interference as easily and cost effectively as the NTIA suggests?^{19/}

Accordingly, the Commission's proposal would constitute at best a modification and, at worst, a revocation of MariTEL's license. No attempt to characterize the proposed action as a mere rule change can mask the dramatic negative effect that the use of channel 87B for AIS in a wideband simplex mode will have on MariTEL. MariTEL cannot be required to employ a system that will be rendered commercially unviable because of the inability to protect itself from AIS interference. Attached are descriptions of data products that MariTEL deems to operationally and for different services commercially viable in the absence of simplex AIS;^{20/} unless MariTEL can use these products with the technical characteristics shown (in particular, data throughput, receiver sensitivity, and other technical parameters), its ability to introduce commercial maritime data service may be fatally hampered by AIS systems.^{21/}

^{19/} MariTEL invites the NTIA to suggest a device manufacturer or model of radio that it believes would be able to operate reliably in the AIS environment. Of course, such a device manufacturer would be required to have commercially attractive products available to meet MariTEL's impending construction deadline. Normal equipment development cycles would not permit the production of equipment in a timely fashion to meet this deadline. It is disturbing that, on the one hand, NTIA and the USCG continue to object to the FCC's grant of additional time for MariTEL to construct its facilities, and on the other, they introduce roadblocks that make it virtually impossible to a construct commercially available and desirable system in a timely fashion.

^{20/} MariTEL plans to adopt one or more data devices based on the differing service offerings.

^{21/} MariTEL notes that RF Neulink has recommended several measures designed to overcome the destructive effects that AIS systems will have on VPC operations. The Commission must consider imposing changes recommended by RF Neulink to AIS transmitters. Consistent with FCC and Congressional policy, MariTEL cannot be required to absorb any costs associated with the introduction of new destructive technologies in adjacent spectrum. Therefore, any costs for MariTEL to overcome AIS interference should be borne by the USCG. See Comments of MariTEL at 35-37.

NTIA complains that MariTEL's assertions about harmful interference are speculative because MariTEL has not identified the type of system it expects to deploy and has not yet constructed its facilities. NTIA's assertions are circular and, in any case, inaccurate. First, MariTEL has not yet introduced full commercial service precisely because of the interference it will suffer from the proposed use of simplex AIS. It would be foolish for MariTEL to roll out a service that, if the NTIA and USCG find their wishes granted, will immediately become commercially unviable.

Second, MariTEL has disclosed in several public fora the type of equipment it wishes to employ in its maritime data service. MariTEL furthermore provided plans for its data network to the USCG in November 2002, introduced in the record of this proceeding the technical characteristics of the RF Neulink device, and provided a working model of the device for review by the Commission.^{22/} MariTEL also publicly announced the type of equipment that it intended to employ at the 2004 Radio Technical Commission for Maritime Services ("RTCM") meeting. Accordingly, NTIA could in fact have easily evaluated the impact of AIS operations on MariTEL's planned system. Dorr Engineering has performed the evaluation that NTIA could have, and concluded, as noted above, that the NTIA's proposed solution is not an effective engineering solution to mitigate AIS interference.

D. The USCG Cannot be Trusted to Mitigate Interference to MariTEL

In response to the FCC's inquiry regarding whether the USCG should be required to coordinate with MariTEL to mitigate harmful interference caused by AIS devices, the NTIA states that the USCG has taken steps to mitigate interference by working with international

^{22/} See MariTEL, Inc. Notice of Ex Parte Presentation, RM-10821 (January 16, 2004) (presentation describing device in detail).

bodies.^{23/} However, that coordination with international bodies has only served to intensify the AIS interference problem by supporting those international bodies adoption of equipment standards (such as those concerning Class B devices) that do not conform to U.S. spectrum policy. Those standards will permit the distribution of devices which operate exclusively on B-side wideband simplex channels with emission masks significantly worse than the already liberal AIS emissions recently approved by the Commission. A sincere effort to work with international bodies to eliminate interference would have included an attempt to promote AIS in a manner consistent with the USCG's pre-existing access to channels as specified in the FCC's rules and the MOA. To date, the USCG has not supported any effort to stop future AIS devices from causing interference nor has it joined in any attempt to insure the Class A transponder's emissions mask (much less the significantly worse Class B mask) actually meets the FCC requirements.

NTIA also states that "it is not apparent what can be negotiated" with MariTEL because, according to NTIA, MariTEL "has indicated that it plans to implement a data service for which interference can easily be addressed..."^{24/} As demonstrated above, it is precisely because MariTEL intends to deploy a data system that it will suffer destructive interference from AIS. Moreover, contrary to NTIA's assertion, the USCG has not "indicated its willingness to discuss any VPC provider means for minimizing interference." In fact, the USCG has refused to address this issue in a responsible fashion with MariTEL and continues to rest on its assertion, which is contradicted by the weight of the evidence, that there will be no harmful interference to minimize. Further, the NTIA refuses to meet with MariTEL to meaningfully discuss these

^{23/} Comments of NTIA at 12.

^{24/} *Id.* This recognition of MariTEL's proposed service contradicts other NTIA assertions that MariTEL "has not provided the technical parameters of the VPC system it intends to deploy..." *Id.* at 15.

issues. Consequently, as MariTEL suggested in its comments, if the FCC proceeds with its plan to reallocate, contrary to MariTEL's rights, channel 87B for AIS operations, it must condition such use on the USCG's agreement, in a manner reasonably acceptable to MariTEL, on interference abatement techniques.

MariTEL's concern regarding the USCG's willingness to mitigate harmful interference from AIS operations is plainly validated by the NTIA's assertion that, if channel 87B is dedicated for AIS operations, "then the obligation to mitigate interference to and from AIS and VPC becomes a responsibility for MariTEL."^{25/} The FCC may believe that the USCG and MariTEL should cooperate to resolve harmful interference caused by AIS operations; however, the USCG (at least as represented by NTIA) apparently wishes to divorce itself from future obligations to cooperate by shifting the burden completely to MariTEL and incumbent VPC licensees to cure the interference that the USCG itself will cause by the introduction of AIS technologies. The FCC cannot, therefore, proceed under the assumption that the USCG will cooperate in attempts to resolve harmful interference.

E. The Right of Innocent Passage does not Militate in Favor of Adoption of the Proposed Rules

The NTIA suggests that international law militates in favor of designating channel 87B for AIS operations. NTIA is incorrect. MariTEL recognizes that ships can operate consistent with the authority provided by their flag nation in international waters. However, nations retain rights within their territorial waters to regulate – and prohibit – radio communications that will cause harmful interference to domestic operations. NTIA cites a modification, proposed by the

^{25/} *Id.*

United States, to the International Telecommunications Union (“ITU”) Regulations.^{26/} However, the document to which NTIA cites is merely a proposal. It is neither international nor U.S. law.

MariTEL understands that international vessels may use channel 87B beyond 12 miles of the U.S. coast. However, if channel 87B is not designated for AIS use in U.S. waters, then vessels will become accustomed to switching to the U.S. AIS channels when they approach U.S. waters. Accordingly, while the use of channel 87B by international vessels may be problematic in the short term, it need not become a long term impediment to MariTEL’s use of its licensed spectrum.

F. MariTEL is Entitled to Compensation for Loss of its Frequencies

NTIA asserts that MariTEL is not entitled to compensation “as a result of the Commission clarifying an existing obligation.”^{27/} The FCC is not clarifying an existing obligation; rather, it is creating an obligation that did not exist before. As MariTEL explained in detail in its comments, the obligation to make available to the USCG channel 87B will have a dramatically greater impact on MariTEL than an obligation to make available two narrowband offset channel pairs.^{28/}

NTIA states that “[s]imilarly, the federal (and Canadian) authorization for [Saint Lawrence Seaway Development Corporation’s] use of channels 87B and 88B for its AIS

^{26/} *Id.* at 13-14 and n.30.

^{27/} Comments of NTIA at 16.

^{28/} The situation is particularly unjust since the Commission explicitly stated in the auction package that the winning bidder would not lose the use of a 25kHz channel due to the AIS/PAWSS obligation accompanying the auctioned spectrum. It is difficult to see why the Commission would have purposefully reassured bidders that no wideband 25kHz channel would be affected unless that reassurance was aimed at driving up the price paid by bidders for that more valuable spectrum, which is precisely the effect that it had.

program eliminates any question of compensation for MariTEL in this regard.”^{29/} NTIA’s meaning is unclear. However, if NTIA is suggesting that it need not compensate MariTEL today simply because the Saint Lawrence Seaway Development Corporation (“SLSDC”) holds an authorization issued by NTIA prior to termination of the MOA, then its argument is preposterous. SLSDC may continue to hold an “authorization” from NTIA for channel 87B, but that authorization became meaningless once MariTEL terminated the MOA. It was through the MOA, and only through the MOA, that NTIA had any authority to make channel 87B available for Federal government use in the first place.^{30/} Once the MOA was terminated, NTIA’s authority to make the channel available also terminated. Under NTIA’s interpretation of its rights, it can apparently continue to permit Federal government entities to use channel 87B. However, such an assertion is directly contrary to the *Notice*, which makes it clear that MariTEL is the licensee of channel 87B today.

Moreover, the NTIA asserts, citing only the Commission’s claim in the *Notice*, that the Commission is not proposing to change the terms of MariTEL’s licenses.^{31/} MariTEL has conclusively demonstrated that the FCC is, in fact, modifying the terms of MariTEL’s authorizations, which it cannot accomplish absent the procedures established under Section 316 of the Act.

^{29/} Comments of NTIA at 16.

^{30/} Indeed, as MariTEL has asserted in the past, NTIA exceeded its authority by permitting SLSDC to employ channel 87B in the first instance. The MOA plainly stated that in order for other entities to use channel 87B, they were required to enter into an agreement with the USCG. The SLSDC did not enter into such an agreement. Accordingly, its use of channel 87B is violative of the MOA in any case. The NTIA’s authorization to the SLSDC was, therefore, issued without authority and is invalid. The FCC should find that the SLSDC is violating the Communications Act by operating on channel 87B without authority today.

^{31/} Comments of NTIA at 16.

G. MariTEL's Sharing Proposal Requires Further Evaluation

Several parties object to MariTEL's sharing proposal.^{32/} However, MariTEL's initial comments in this proceeding overcame those objections. First, MariTEL's comments demonstrated that the time slot proposal is technically feasible. In fact, the sharing proposal would employ the same techniques as the Class B devices that the NTIA asserts will proliferate once channel 87B is available for AIS. Second, as MariTEL's comments make clear, it is willing to permit the transmission and use of AIS data for any non-commercial application. Consistent with its expectations, MariTEL should be permitted the exclusive ability to transmit and use commercial AIS data.

H. The FCC Should Reject the Attempt to Reallocate Channel 87B on a Nationwide Basis

Several parties (including NTIA) state that the FCC should reallocate channel 87B on a nationwide basis, and not simply in maritime areas. Unfortunately, NTIA's request is emblematic of its overall approach to spectrum over which it has no rights. Whatever legitimacy there may be to the designation of channel 87B for AIS in certain areas of VPCs 1-9, there is absolutely no basis for its recharacterization in inland VPCs.^{33/} Inland VPC licensees, including

^{32/} See, e.g., Comments of Marine Exchange of Puget Sound at 1; Comments of North Pacific Marine Radio Council at 2; Comments of RTCM at 3.

^{33/} Indeed, there is little basis for reallocation of channel 87B far from waterways even within maritime VPCs. The FCC never intended for maritime VPC licensees to give up rights to two narrowband offset channels throughout their VPCs. Instead, the need for those channels was limited to areas where the USCG had PAWSS operations. *Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19876-77 ¶ 48 (1998) ("*Third Report and Order*") (discussing need for duplex channels pairs to be set aside for AIS in maritime VPCs only). In fact, immediately after the execution of the MOA, the USCG informally agreed that it would be appropriate to discuss the designation of areas where MariTEL could use the channels otherwise dedicated for USCG use. Accordingly, regardless of whether the designation of channel 87B is "equivalent" to the designation of two narrowband offset channels, as specified in the rules, the

MariTEL, were never obligated to make spectrum available for USCG use, either pursuant to Section 80.371 or otherwise. Yet NTIA suggests that inland VPCs also be stripped of their rights to channel 87B, with absolutely no citation of the authority under which the FCC could take such action. However, inland VPC rights are significant. MariTEL, in addition to being a maritime VPC licensee, is also an inland VPC licensee, covering a population of nearly 2,000,000 people with seven licenses.^{34/} The total population served by inland VPCs is nearly 17,000,000. Based on commercial transactions in which MariTEL has recently been engaged, the value of the spectrum that NTIA seeks to strip from inland VPC licensees is easily \$3,000,000. Yet, NTIA does not address how it would compensate these licensees for this loss. NTIA's failure to address this issue is characteristic of its indifference to the FCC's licensing procedures, due process and fundamental fairness.

NTIA's recommendations regarding the "clearing" of incumbent VPC and land mobile licensees also demonstrate a disregard for due process and the FCC's rules and procedures. NTIA states that any incumbent VPC licensees operating on channel 87B should "migrate to a different frequency."^{35/} It does not suggest to what "different frequency" these VPC licensees should relocate. MariTEL is the licensee of all VPC channels in all maritime VPC regions except where incumbent licensees exist. Therefore, any "different" VPC channels are already licensed to MariTEL. NTIA apparently, therefore, not only wishes to strip MariTEL of its rights to channel 87B, but also to other channels, so that it can require the relocation of incumbent channel 87B licensees to MariTEL's frequencies.

designation of that channel throughout a VPC is certainly not equivalent to designation of spectrum in areas proximate to navigable waterways.

^{34/} MariTEL is authorized to provide inland VPC services in VPCs 10, 12, 15, 19, 20, 21 and 22.

^{35/} Comments of NTIA at 21.

Similarly, NTIA suggests that land mobile licensees simply be declared secondary on channels that they previously operated on a primary basis. Such an action would certainly constitute a modification of these licensees. However, NTIA does not address the need to undertake procedures under Section 316 of the Act to accomplish the modification of the licenses it deems necessary.

The NTIA's apparent justification for the reallocation of channel 87B on a national basis relates to its use in a satellite reception system.^{36/} The use of channel 87B in a satellite-based system has never been noted to the FCC in this or any other proceeding. Instead, it is further evidence of the fact that the NTIA does not merely seek a simple modification of the rules to achieve what otherwise could not be achieved under Section 80.371 of the rules – the designation of spectrum in maritime areas to support PAWSS. Rather, it represents a new request to reallocate spectrum from non-government to government use, and evidences the USCG's fervor to engage in "scope creep," whereby it continuously expands the scope of its spectrum requirements as ideas arise, without ever mapping out a comprehensive plan for its operations. Such a reallocation cannot be disguised as a simple modification of the rules; it is a material change to MariTEL's licenses that can only be accomplished under the procedures set forth in Section 316 of the Act.

^{36/} Comments of NTIA at 24-25.

III. CONCLUSION

MariTEL, Inc. hereby submits the foregoing reply comments and asks that the FCC take actions consistent with the views expressed herein.

Respectfully submitted,

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January 31, 2005