API TeleComm
The Telecommunications Committee of the American Petroleum Institute

ENTELEC
THE ENERGY TELECOMMUNICATIONS AND ELECTRICAL ASSOCIATION

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

July 29, 2011

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

Re: ***In Re Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, File No. EB-09-IH-1751**

Atlas Pipeline Mid-Continent, LLC (File No. 0004526264)
DCP Midstream, LP, (File No. 0004354053)
Enbridge Energy Company, Inc. (File No. 0004430505)
Encana Oil & Gas (USA) Inc. (File Nos. 0004030479 and 0004604962)

Dear Ms. Dortch:

Pursuant to Section 1.41 of the rules and regulations of the Federal Communications Commission,[1] the Telecommunications Subcommittee of the American Petroleum Institute ("API") and the Regulatory Committee of the Energy Telecommunications and Electrical Association ("ENTELEC") urge the Commission to grant the pending assignment applications of four petroleum and natural gas companies (the "Oil and Gas Applicants") that have been designated for hearing in the above-captioned proceeding.[2] Each of these applicants has requested that the Commission remove its application from the hearing and grant it post haste.[3] API and ENTELEC support these requests.[4]

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[1] 47 C.F.R. § 1.41 (2010).

[2] The Oil and Gas Applicants are Atlas Pipeline Mid-Continent, LLC (File No 0004526264), DCP Midstream, LP (File No. 0004354053), Enbridge Energy Company, Inc. (File No. 0004430505) and Encana Oil & Gas (USA) Inc. (File Nos. 0004030479 and 0004604962). All proposed applicant-assignees whose applications have designated for hearing in this proceeding, including the Oil and Gas Applicants, are part of the "Critical Infrastructure Industry" as that term is defined in the FCC's rules. *See,* 47 C.F.R. § 90.7 (2010).

[3] *See, CII Petitioners'* Petition for Reconsideration, EB Docket No 11-71 (May 19, 2011) ("Petition for Reconsideration").

[4] Although only some of the Oil and Gas Applicants are members of API and/or ENTELEC, API's and ENTELEC's support in this proceeding extends to all of them.

The Oil and Gas Applicants have advised the Commission that they require the use of this spectrum to comply with federal requirements governing oil and gas pipeline communications systems and to continue operating their facilities in a safe and efficient manner in the public interest.[5] None of the applicants has been accused of any wrongdoing in the hearing proceeding,[6] and we understand that the subject of the hearing proceeding – Maritime Communications/Land Mobile LLC ("Maritime") – will not benefit in any way from a grant of these applications.[7]

We also understand that the Commission afforded a railroad the opportunity to demonstrate why its application should be removed from the hearing for public interest reasons.[8] The Commission's Enforcement Bureau claims the railroad should be afforded this opportunity because "the Commission *apparently* concluded that [the railroad's] applications are unique among those designated for hearing in the HDO in that they alone contemplate the use of spectrum for the purpose of implementing the federally-mandated positive train control system, designed to protect the public from catastrophic train-to-train collisions."[9] The Administrative Law Judge in this proceeding also noted that the railroad is required to comply with a congressional mandate.[10]

On July 27, 2011, the House Energy and Commerce Subcommittee on Energy and Power approved the Pipeline Infrastructure and Community Protection Act ("PICPA").[11] Section 5 of the PICPA requires that, within two years of enactment, the Department of Transportation pass regulations requiring companies like the Oil and Gas Applicants to implement automatic or remote-controlled shut-off valves or equivalent technology.[12] As discussed in the Petition, Maritime's AMTS spectrum is critical in the Oil and Gas Applicants' automated and remote monitoring operations, which will ensure compliance with the PICPA and other federal requirements.[13]

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[5] Petition for Reconsideration, p. 6.

[6] *Maritime Communications/Land Mobile, LLC* ("Maritime"), Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011) ("HDO").

[7] Petition for Reconsideration, p. 24 (proposing to place funds into an independent, third-party escrow account to be held until final determination is made regarding Maritime's qualifications to remain a licensee).

[8] HDO at *fn* 7.

[9] Enforcement Bureau's Opposition to *CII Petitionres'* Petition for Reconsideration, EB Docket No 11-71 (May 31, 2011) (emphasis added) ("Opposition").

[10] Memorandum Opinion and Order, ¶6 FCC 11M-20 (July 19, 2011).

[11] A draft of the bill is available here: http://republicans.energycommerce.house.gov/Media/file/Markups/Energy/072711/PIPSAF11_001_xml.pdf (last visited July 28, 2011).

[12] PICPA at §5.

[13] Petition p. 6.

We are aware of no reason why the Oil and Gas Applicants should be treated any differently than the railroad.[14] Their applications already have been long pending at the Commission.[15] Grant at this point, without the necessity of further involvement in what promises to be a prolonged and uncertain hearing proceeding, is required in the public interest.

Background

API is a national trade association representing approximately 400 companies involved in all phases of the petroleum and natural gas industries, including the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Subcommittee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the petroleum and natural gas industries.

ENTELEC is a user association focusing on communications and control technologies used by petroleum, natural gas, pipeline and electric utilities companies. ENTELEC provides an educational platform for these industries, including technical presentations, equipment, exhibits and networking opportunities during the annual ENTELEC Conference & Expo and also advocates regulatory and other issues on behalf of these industries.

Petroleum and natural gas companies utilize a variety of communications systems authorized by the FCC to meet private, internal communications requirements. These systems serve a multitude of vital telecommunications functions, including communications with remote oil and gas exploration and production sites for voice and data applications, communications with refineries, the extension of circuits to remote pipeline pump and compressor stations, and supervisory control and data acquisition ("SCADA") systems that remotely monitor and control oil and gas wells and pipelines and allow petroleum and natural gas companies to conduct their day-to-day operations in a safe and efficient manner.

Lack of Available Spectrum Options

The Oil and Gas Applicants have advised the Commission that they seek to acquire AMTS spectrum from Maritime because there are no other viable spectrum options readily available to satisfy their critical requirements.[16]

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[14] Positive Train Control technology must be implemented by 2015. *Rail Safety Improvement Act of 2008*, Pub. L. No. 110-432, filed Oct. 16, 2008, 122 Stat. 4848, 4856-57 §104(a)(2008). It is likely the Oil and Gas Applicants will face a similar compliance deadline, in addition to current federal requirements.

[15] The Oil and Gas Applicants filed their assignment applications on the following dates: Atlas Pipeline (March 2, 2011), DCP Midstream (August 19, 2010), Enbridge (November 19, 2010), Encana (November 13, 2009 and April 7, 2011).

[16] Petition p. 12.

Spectrum auctions, which have become the Commission's primary method of assigning spectrum to licensees, are particularly inappropriate for critical infrastructure entities. Auctions are based on geographic area licenses, which are often centered around populated areas that correlate to the markets of commercial service providers. These kinds of markets do not correspond in any meaningful way to pipeline facilities or other service areas that the energy industry seeks to cover. As a result, oil and gas companies usually have no meaningful opportunity to compete for much needed spectrum via auctions.

Compounding this problem, over the years the Commission has reallocated large amounts of bandwidth from the critical infrastructure industry to other services, and there currently is a dearth of channels available to satisfy critical infrastructure requirements.[17] For example, the entire 2 GHz band, once the mainstay of long-haul Private Operational Fixed Microwave Services, is now allocated to Personal Communications Services (PCS), Advanced Wireless Services (AWS) and Mobile Satellite Services (MSS).[18] Many former 2 GHz users tried to relocate to the 4 GHz and 6 GHz bands, the next-best options for long-haul links, but satellite earth stations, which are routinely coordinated and licensed for the entire band and satellite arc, block many coordination efforts.

The lack of available spectrum for site-based licensing coupled with deficiencies in the Commission's auction procedures have led critical infrastructure entities like the Oil and Gas Applicants to enter the FCC's secondary markets to acquire spectrum to support their ongoing business activities. Here, the Oil and Gas Applicants sought spectrum from MCLM, a duly authorized Commission licensee, and are now ensnarled in a prolonged hearing proceeding.

Grant of the Applications is in the Public Interest

The Oil and Gas Applicants are upgrading their communications systems in mission-critical operation and control systems to comply with federal mandates.[19] These new systems represent a major advance in the disaster response capability of oil and gas companies and promise to increase efficiency, promote safety and ensure environmental protection now and in the years ahead. Oil and gas companies also seek to extend the reach of their workers' communications capabilities in remote and rural areas often unserved by commercial providers.

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[17] *See, e.g.,* Comments of the Utilities Telecom Council, RM-11429 (June 26, 2008). "The smart grid necessitates even more reliance on internal communications and IT networks than utilities already have, especially for data transmission. Much of the communication will be wireless; however, the critical infrastructure industries currently have no RF spectrum access to accommodate these needs."

[18] See 47 C.F.R. Sec. 101.69 (preamble) (reallocation of 1850–1990, 2110–2150, 2160–2200 MHz to PCS, AWS, MSS).

[19] Petition p. 6. *See also*, 74 Fed. Reg. 63311 (Dec. 3, 2009). This final rule, adopted by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") in 2009, amends federal pipeline safety regulations governing control room management for pipelines where controllers use SCADA systems.

Grant of the Oil and Gas Companies' pending assignment applications would promote these goals by providing these entities with much-needed spectrum to upgrade their current systems and comply with federal mandates. These new systems will protect lives, health and property, both in connection with the day-to-day operations of these companies, as well as during responses to emergency incidents. Safe and reliable operations of these systems is integral to the production and delivery of our nation's energy resources to the public.

* * *

API and ENTELEC urge the Commission to grant these pending applications and provide the Oil and Gas Applicants with urgently needed spectrum to enable them to comply with federal requirements and continue operating their facilities in a safe and efficient manner.

/s/ Bill Carter

Bill Carter
Co-Chair ENTELEC Regulatory Committee

/s/ James Crandall

James Crandall
Policy Analyst, Finance and Accounting
American Petroleum Institute

/s/ Tom Frobase

Tom Frobase
Co-Chair ENTELEC Regulatory Committee

CERTIFICATE OF SERVICE

I, Neenah A. Gay, herby certify that on this 29th day of July, 2011, a true copy of the foregoing letter was served via first class, postage paid United States Mail upon the following:

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