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To: Chief, Office of Engineering and Technology

Maritime Telecommunications Network, Inc. ("MTN") hereby requests leave to file a response to the Reply filed by the Association of American Railroads ("AAR") and Consortium Digital Microwave System ("CDMS") in the above-captioned proceeding ("AAR/CDMS Reply"). The Reply raises new issues that were not addressed in the initial AAR/CDMS Petition to Deny.¹ To avoid burdening the Commission with separate filings, MTN also hereby responds to the "Informal" Petition to Deny and Opposition to MTN's Petition for Partial Reconsideration filed by the American Petroleum Institute ("API Pleadings"). Because Petitioners' pleadings lack the factual specificity required by the Communications Act, the petition to deny and oppositions should be dismissed.

I. PETITIONERS HAVE THE BURDEN OF PROVING HARMFUL INTERFERENCE

MTN has *never* learned of an instance of unresolved harmful interference that may have resulted from its operations, from any quarter. While API, like AAR and CMDS (hereinafter,

¹ The AAR/CDMS Reply raises issues that were never mentioned, even in a footnote, in their Petition to Deny. Under long established Commission Rules, replies must be confined to issues raised in the initial petition and the oppositions; raising new issues in the Reply places the MTN in an extremely unfair position if it is unable to respond.

collectively, "Petitioners") imply that their fixed service stations have received some type of interference, they have never provided any evidence to MTN or to the Commission that they have actually experienced harmful interference at any specific licensed station. Apparently, the Commission is expected to accept, as the basis for a request to decline to renew MTN's experimental authorization, a bare allegation that some level of interference might have been experienced at an undetermined location, date, and time. This is hardly the level of proof required by the Commission or by the Communications Act itself to support a petition to deny or Petitioners' requested relief.

The Petitioners rely heavily on the fact that MTN's authorization is experimental, and hence, subject only to secondary interference protection. MTN acknowledges that the Commission's Rules state that experimental licensees must avoid causing harmful interference to established radio services. However, the Commission recognizes that even entities with secondary interference protection cannot be expected to carry the burden of proving a negative--that they are *not* causing harmful interference anywhere in the world--just because someone claims that they might be doing so.

In *Offshore Navigation, Inc.*,² NCS International, Inc. ("NCS"), attempted to obtain dismissal of an application for developmental authority to operate an experimental spread spectrum system that would provide the offshore oil industry with the positions of seismic survey vessels, drilling rigs, drilling platforms, and underwater pipelines. Although Commission staff (at the Bureau level)

² *Offshore Navigation, Inc., Requesting Authority to Establish Five New Developmental Systems, Memorandum Opinion & Order*, Application File Nos. 338408-338412-RS-024, FCC 86-194, 1986 WL 291598 (F.C.C.) (released May 1, 1986).

invited NCS to provide verified claims of interference, NCS never did. The Bureau therefore dismissed the NCS petition to deny.

In affirming the Bureau's dismissal, the Commission stated that the petition had failed to meet the requirements of Section 309(d)(1) of the Communications Act, under which an entity filing a petition to deny must (1) demonstrate by specific allegations of fact that the grant of the application would be inconsistent with the public interest; and (2) support the statement of facts with affidavits from individuals with personal knowledge concerning the claims. The Commission therefore rejected the NCS application for review, stating that NCS "has failed to show any interference to its operations" by the developmental system and "has made generalized claims about potential interference. These unverified allegations cannot prove themselves but must be sustained by evidence" in order to prevail.³

AAR and CDMS disingenuously claim that their Petition "does *not* contain allegations of specific cases of interference because neither AAR's members nor CDMS could obtain from MTN sufficient advance information to determine whether the certain interference events were attributable to MTN's operations" (emphasis in the original).⁴ API has made a similar suggestion in its Petition.⁵ Thus, Petitioners implicitly admit that they have not provided specific factual allegations of *harmful*

³ *Id.* at ¶ 8. API, in particular, echoes the NCS claim by stating that its members require advance information from MTN to identify "potential" outages. API Petition at 4, ¶ 16.

⁴ AAR/CDMS Reply at 3.

⁵ API's reliance on Section 5.163 in this regard is misplaced. Section 5.163 requires experimental licensees to maintain **historic records** of operation, not to provide advance notice of operation. API Petition at 5, ¶ 7; 47 C.F.R. § 5.163. MTN has, of course, repeatedly offered to assist in determining the cause of alleged past interference events that are described with sufficient specificity to be identified.

interference warranting a petition to deny in accordance with the Communications Act. MTN not only cannot provide the advance information requested by Petitioners, since large, ocean-going ship movements are not under MTN's control, but also, MTN is under no obligation to do so.

Petitioners admit that MTN has offered to verify whether specific instances of harmful interference experienced by fixed service operators could be attributed to earth station aboard vessel ("ESV") operations, provided that the time, location, and other identifying information was provided to MTN. Unfortunately, Petitioners have never brought any such occurrences to MTN's attention. Petitioners maintain that MTN's forthright offer to assist their station operators "is tantamount to appointing the fox as the guardian of the chicken coop," and that MTN's offers to cooperate are "hollow and meaningless." In fact, MTN has a similarly cynical reaction to Petitioners' invented requirement that MTN provide advance information about ship movements, prior to demonstrating any possible need to investigate a specific, verified interference event. Significantly, in *Offshore Navigation*, the Commission recited with approval the Bureau's evaluation of a claim of interference made by Racal, whereby the Bureau accepted the affidavit of Offshore Navigation that it was not operating its experimental station at the time of an instance of alleged interference to Racal's licensed service. (Racal was unrelated to the petitioner in the case, NCS.) The Commission then dismissed the NCS petition to deny for failure to support its claim.⁶

Similarly, in the case at hand, Petitioners have refused to produce specific allegations of *harmful* interference, supported by affidavits from individuals with personal knowledge. For this

⁶ *Id.* at ¶ 5. NCS tried to rely on Racal's bare allegation of possible interference; Racal was not a party to the NCS petition to deny, possibly because the Bureau had rejected Racal's interference allegation in part on the basis of the Offshore Navigation affidavit.

reason alone, their petitions to deny and oppositions should be dismissed, in accordance with Commission policy, case law, and the Communications Act itself.

II. MTN'S OFFERS TO CONDUCT JOINT EXPERIMENTS WITH PETITIONERS HAVE BEEN IGNORED OR REJECTED

Petitioners maintain that MTN's requests to continue and expand its experimental authority are due to MTN's desire to operate on a commercial basis. Although this is MTN's long-term goal, MTN continues to require an experimental authorization due to the protracted process of securing international recognition at WRC 2000 for sharing fixed service frequencies with ESV operations.⁷ Controlled experiments, with the cooperation of fixed service operators, would clearly assist in validating the methodology for assessing the potential for interference from ESVs. API itself states that "coordination of 'in-motion' earth stations is a novel idea," and that "*actual empirical evidence*" would permit a less restrictive frequency coordination standard.⁸

Petitioners claim that MTN's offers to conduct experiments with them are "too little, too late," and that collection of data would require "an entire year." Certainly, joint experiments could have been conducted earlier, but Petitioners have been unwilling to participate despite invitations from MTN. Nonetheless, the pre-WRC meetings are still in progress, there still are 12 months until

⁷ AAR and CDMS state that the Commission "has not, in the past, proposed sharing for dissimilar services, *i.e.*, fixed and mobile." AAR/CDMS Reply, n.17. In actuality, the endorsement of fixed and mobile sharing of frequency bands is a trend the Commission has adopted in recognition of advances in technology. In designating spectrum for Local Multipoint Distribution Service ("LMDS"), Wireless Communications Service ("WCS"), General Wireless Communications Service ("GWCS"), and in amending its commercial mobile radio service ("CMRS") Rules (which apply to cellular service, Personal Communications Service, and Specialized Mobile Radio Service), the Commission has specifically expressed support for fixed *and* mobile use of each of these bands.

⁸ API Petition at 7, ¶ 10.

WRC 2000, and additional technical work on long-term coordination standards is expected to continue even after WRC-2000. Thus, further experimentation, in which Petitioners' participation would be welcome, is still appropriate and anticipated.

It is time for AAR and CDMS to demonstrate their sincerity in stating that they, "and other members of the Fixed Service community, have no objection to shared use of the band as long as their operations are protected from harmful interference." However, to date, their definition of "protection" precludes appropriate shared use of the band. For example, Petitioners even have opposed MTN's applications before the International Bureau for permanent earth station authority for specific, fixed sites at piers, although the subject operations are governed by established Commission Rules and by coordination procedures applicable to any other fixed earth station.

Moreover, Petitioners all but ignore MTN's extensive technical work in U.S.-domestic and U.S.-WRC preparatory meetings, and before various international organizations. They also minimize the considerable industry support MTN has obtained thus far. Although they mention the coordination methodology developed by MTN, they do not bring to the Commission's attention that the methodology is generally accepted by technical and industry bodies, although the parameters for use of the methodology are still being discussed. MTN therefore proposes that rather than snipe from the sidelines, Petitioners should accept MTN's offers to cooperate and join MTN in controlled experiments with ESVs.

III. PETITIONERS MISAPPREHEND THE COMMISSION AUTHORITY UNDER WHICH MTN OPERATES

Petitioners have accused MTN of conducting commercial operations with its experimental authorization. In the first place, because MTN holds special temporary authority from the

Commission to operate ESVs on a fixed and in-motion basis to conduct frequency coordinated commercial operations, the accusations of Petitioners are misplaced.

As a separate matter, Petitioners are apparently unaware that for developmental satellite radiocommunication operations, the Commission has specifically requested the Office of Engineering and Technology to take over the function of the Satellite Engineering Branch of the International Bureau in reviewing developmental authorizations. Under the Commission's previous Rules (*see* 47 C.F.R. § 25.300 (1996)), entities could obtain developmental authorization to create and test, on a commercial basis, equipment for use in space radiocommunication service.

In 1996, the Commission determined that it was in the Commission's interest to streamline the satellite earth station licensing rules, including consolidating Part 25 space radiocommunication developmental authorizations with experimental authorizations issued by the Office of Engineering and Technology ("OET"). The Commission specifically ordered OET to cooperate with the International Bureau in the issuance of such authorizations for testing in the space radiocommunication service.⁹ Thus, MTN has no choice but to continue to obtain authorization from OET; experimental authorizations for satellite service developmental operations are now obtained through OET rather than from the International Bureau.

The Commission has continued to emphasize OET's role in cooperating with the International Bureau in issuing developmental authorizations. In an Order amending its experimental regulations, the Commission specifically stated:

⁹ *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Report & Order*, 11 FCC Rcd 21581, ¶ 51 (1996).

In the Streamlining Order, the Commission eliminated Subpart E, concerning developmental operations, from Part 25, stating that a developmental authorization appeared tantamount to an experimental authorization issued by OET. The Commission further stated that **OET will coordinate with the Commission's International Bureau to confirm that *developmental operations* are compatible with authorized services.**¹⁰

Thus, the Commission specifically recognized that because it had eliminated developmental authorizations from Part 25, such *developmental* authorizations would henceforth be obtained through OET, in cooperation with the International Bureau.

MTN continues to be baffled by Petitioners' suggestions that experimental authorization for ESVs is no longer necessary, although Petitioners apparently are not convinced that MTN's operations do not cause harmful interference to fixed service operators and therefore demand the compilation of advance information. Again, API admits that "actual empirical evidence" would be useful in establishment of a frequency coordination standard.¹¹ Petitioners cannot have it both ways. MTN's experience has repeatedly confirmed that its services do not cause harmful interference, but MTN welcomes the opportunity to work with the Petitioners to further demonstrate, through controlled experimentation, that the ESV service can coexist with fixed service stations. The Commission should therefore dismiss Petitioners' pleadings and encourage joint experiments.

IV. CONCLUSION

If Petitioners were truly sincere in stating that they "have no objection to shared use of the band as long as their operations are protected from harmful interference," then Petitioners would

¹⁰ *Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, Report & Order*, 13 FCC Rcd 21391, n.36 (1998) (emphasis added).

¹¹ API Petition at 7, ¶ 10.

provide to MTN, or the Commission, specific, factual evidence that harmful interference has been experienced at their stations. Because they have not done so, their silence speaks for itself. Nonetheless, MTN remains willing to cooperate with Petitioners in conducting controlled experiments to evaluate whether ESV operations may be adversely affecting fixed service stations.

Petitioners have realized that despite their obstructionist efforts, the industry apparently is coming to a consensus on an interference protection standard for ESV operations. Petitioners now seek to minimize and impede such progress through the experimental licensing process. The Commission should recognize Petitioners' self-serving efforts for what they are. Because Petitioners have failed to establish the *prima facie* elements of a petition to deny under the Communications Act, Commission policy mandates that their petitions and oppositions be dismissed. MTN therefore respectfully requests that the Commission dismiss Petitioners' respective pleadings and renew MTN's experimental authorization.

Respectfully submitted,

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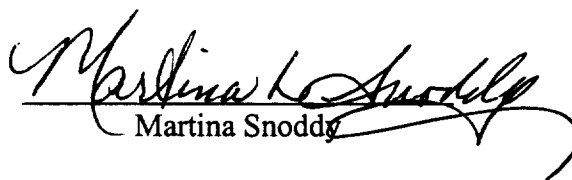
CERTIFICATE OF SERVICE

I, Martina Snoddy, hereby certify that on this 19th day of May, 1999, copies of the attached Opposition to Petition to Deny has been sent via first class U.S. mail, postage pre-paid, to the following:

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