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

American Hospital Association's	)	
Proposal For Migration Of	)	**DA 03-3178**
Medical Telemetry Equipment	)	
To Wireless Medical Telemetry Service	)	

JOINT REPLY COMMENTS OF THE AMERICAN HOSPITAL ASSOCIATION AND THE AMERICAN SOCIETY OF HEALTHCARE ENGINEERING

The American Hospital Association ("AHA") and the American Society of Healthcare Engineering of the American Hospital Association ("ASHE"), by their counsel, jointly file this reply to the initial comments filed by other parties in response to the above-captioned Public Notice issued by the Wireless Telecommunications Bureau on October 15, 2003.[1] AHA and ASHE reaffirm their commitment to the expeditious, but orderly, transition of wireless medical telemetry systems out of the 460-470 MHz band ("460 MHz band") and into the frequency bands allocated to the Wireless Medical Telemetry Service ("WMTS") in the way that best safeguards patient safety.

With one exception, the initial comments demonstrated strong support for a multi-month transition period before the freeze was completely lifted on higher power land mobile operations in the 460 MHz band, as a way of protecting hospitals that registered their equipment in the band with ASHE. Over two dozen individual hospitals and health care facilities from across the

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[1] Public Notice: *Wireless Telecommunications Bureau Extends Freeze On High Power Use Of 460-470 MHz Band Offset Channels And Seeks Comment on American Hospital Association's Proposal For Migration Of Medical Telemetry Equipment To Wireless Medical Telemetry Service*, DA 03-3178, October 15, 2003 ("Public Notice").

country filed comments describing the circumstances that were delaying their particular migration out of the band and expressing support for a transition.[2]

AHA/ASHE suspect that those hospitals that filed individual comments are, however, only a tiny subset of the health care facilities that remain dependent on wireless medical telemetry equipment in the 460 MHz band. ASHE itself has already identified approximately 450 health care facilities that continue to utilize critical care operations in the band.[3] This estimate underscores the need both for an orderly transition before the freeze is lifted, and for an outreach program to alert hospitals of the need to migrate out of the 460 MHz band.

To achieve these goals, ASHE is continuing to expand its registration capability to include all health care facilities that will, as of March, 2004, be utilizing systems operating in the 460 MHz band. AHA and ASHE urge the Commission to work closely with the Food and Drug Administration ("FDA") to ensure that all hospitals and health care facilities nationwide have actual notice that the freeze eventually will be lifted, to notify them to register their embedded 460 MHz systems with ASHE, and to emphasize at the same time the legal requirement that they

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[2] Comments in support of the AHA Plan were filed by at least the following hospitals: Bonner General Hospital (Sandpoint, Idaho), Citizens Medical Center (Victoria, Texas), Convergent Health System, Deborah Heart & Lung (Browns Mill, New Jersey), Douglas County Hospital (Alexandria, Minnesota), Downey Regional, East Texas Medical Center, Emory-Adventist Hospital, Fairview Range Regional Health Services (Hibbing, Minnesota), Great River Medical Center (West Burling, Iowa), INTEGRIS Health (Oklahoma City, Oklahoma), Kern Medical Center, Knapp Medical Center (Weslaco, Texas), Marion General Hospital (Marion, Indiana), Mercy Hospital (Independence, Kansas), Mike O'Callaghan Federal Hospital (Nellis AFB, Nevada), Moses Cone Health System, Olean General Hospital (Olean, New York), POH Medical Center (Pontiac, Michigan), Red Bay Hospital (Red Bay, Alabama), Robert Packer Hospital (Sayre, Pennsylvania), Saint Joseph's Hospital and Medical Center (Phoenix, Arizona), Saint Joseph's Hospital of Atlanta, Inc., Salem Hospital (Salem, Oregon), Via Christi Regional Medical Center, Virginia Regional Medical Center, Walls Regional Hospital, West Anaheim Medical Center and Western Missouri Medical Center.

[3] As noted in AHA/ASHE's initial comments, ASHE has already initiated the process for registration of wireless medical telemetry users who remain in the 460 MHz band. The numbers cited above are based on initial responses to mailings made by ASHE upon the FCC's release of the Public Notice.

register their newer equipment in the WMTS bands with ASHE. AHA and ASHE pledge their full cooperation in the necessary education efforts but believe that the FCC and FDA must play a leading role in the outreach effort.

The one commenter that did not support the AHA Plan was the Land Mobile Communications Council ("LMCC"). Citing the band as "the 'workhorse' band for a wide variety of private land mobile entities that routinely suffer from high levels of congestion in all areas of the country," LMCC suggests that "[t]hese frequencies are needed now to bring relief from channel overcrowding."[4] LMCC characterized as "unworkable and unnecessary" the AHA Plan's proposed reliance on frequency coordination procedures to allow higher power land mobile operations at least some access to the band during the transition period. [5] The LMCC denigrates AHA's proposed 40 mile protection distance as much too generous, noting that "some of the most acute need for high power operations is in major urban areas. Radio users in large

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[4] Comments of the Land Mobile Communications Council, October 30, 2003, at 4.

[5] *Id.* LMCC cited the difficulty that LMCC believed ASHE would face to build a comprehensive registry of hospitals using the 460 MHz band within the six months proposed, and suggested that it would be inappropriate and unprecedented for the Commission to require one frequency coordinator to access another's database (or even worse, to have to pay any costs for doing so) and suggests that AHA/ASHE's proposal to charge a fee for the privilege of conducting the required research only aggravates the situation and violates all standards of Frequency Advisory Committee ("FAC") professional collegiality. *Id.* at 4-5. LMCC's unprovoked attack on ASHE's efforts to work cooperatively with the LMCC constituency is unseemly and unconstructive. As LMCC well knows, ASHE's role in the WMTS is not like those of other FACs – it is expressly limited to data collection and not to coordination among licensees. And as LMCC conveniently ignores, other FACs can utilize the FCC's database for coordination because their constituent licensees are licensed individually by the FCC; in the case of WMTS, licensees are licensed by rule and the ONLY source of information about the use of the band is the ASHE database. And to be clear on what costs are involved, ASHE operates the WMTS database on a non-profit basis, so its fees are designed only to cover its costs – in this instance, probably a nominal amount for creating and then updating a CD-ROM with the information about 460 MHz systems. Finally, the Commission should know that each of AHA's proposals was first aired with LMCC in the hope that a cooperative solution would be reached; the LMCC comments demonstrate the result of those efforts.

cities do not routinely enjoy the benefit of 40 miles (or even 20 miles) separation between users. To impose such a requirement would virtually wipe out the possibility of any high power use in many areas of the country until the lifting of the freeze."[6]

While the AHA does not doubt that the 460 MHz band will be used for higher power land mobile operations once the freeze is lifted, the fact that there is a demand for offset channels in these frequencies begs the question before the Commission – how can the band be made available for such use without creating chaotic and potentially life-threatening interference to long-installed wireless medical telemetry systems operating in the band already? Indeed, the FCC must take note that the LMCC, whose constituent members are among the most expert in the world in coordinating co-channel and adjacent channel interference, did not dispute AHA's suggestion that any lesser separation distance would subject low-power, wireless medical telemetry systems operating in the band to a significant threat of harmful interference, and the resulting threat to patient health and safety.[7] Nor has the LMCC suggested that the licensing of higher power land mobiles systems without coordination with medical telemetry systems will not create the very threat of interference that AHA's members fear.[8]

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6 *Id.*

7 LMCC continues to that rely on its view that since "neither LMCC nor any individual FAC has been made aware of any specific cases of interference caused to hospital telemetry operations," there is little likelihood that interference will be a problem when the freeze is lifted. LMCC Comments at 6. As the AHA Task Force has consistently noted, however, because there is currently very limited use of the offset channels in the band, it is likely that interference, while objectionable and dangerous, is intermittent and thus not easily identified to a particular licensee, even if hospitals were experts in ULS, which they generally are not. When the band becomes heavily used, however, wireless medical telemetry systems likely will experience significantly more instances of harmful interference; and patient safety may be compromised.

8 Indeed, it could be said that LMCC's "silence" on the impact of any uncoordinated land mobile use of the band, while substantial medical telemetry uses continue, is "deafening."

For all the reasons that the AHA and ASHE have outlined in the AHA plan, their Comments on the AHA plan, and in this Reply, health care facilities in great numbers are currently utilizing this band, and will continue to utilize this band, for at least the immediately foreseeable future, for critical health care services. It is incumbent upon the FCC to consider the question in this light. And despite several outreach efforts by the AHA to work with LMCC and its members to develop a scheme for cooperative sharing of parts of the 460 MHz band by higher powered land mobile systems while hospitals make good faith efforts to transition out, the land mobile community has provided no positive guidance on how that sharing might be accomplished in a way that satisfies some of their demand without compromising patient safety.

Rather, and seemingly in lieu of any cooperative coordination over the 24 months following the lifting of the freeze, LMCC suggests that the FCC should simply "flash-cut," without regard to how many hospitals continue to rely on wireless medical telemetry systems in the 460 MHz band: "If the Commission is willing to maintain the status quo as an alternative to the AHA proposal, LMCC, in the spirit of compromise, will not object to the extension of the freeze for a one year period tolled from the October 30, 2003 PN."[9] AHA agrees that if the Commission accepts LMCC's concerns about coordination, then a flash-cut lifting of the freeze may be the only alternative. In deciding, however, when that flash-cut should occur, a number of factors must be considered.

In suggesting the need for as much as a 30 month extension, and at least an 18 month extension before higher powered systems were placed anywhere close to existing medical telemetry networks, the AHA was not establishing a "negotiating position." To the contrary, that proposal was itself the most aggressive schedule that the AHA felt the FCC could responsibly

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[9] *Id.* at 6.

impose without creating a significant threat to patient safety. As the AHA has consistently noted, notwithstanding substantial diligence on the part of its members, many hospitals, including both private and federally owned facilities, cannot expect to obtain funding for up to a year or more.[10] And a recent informal poll of the major manufacturers of WMTS equipment capable of operating in the 1.4 GHz band suggests that it will be well into 2004 before a viable inventory of WMTS equipment in the 1.4 GHz band will be commercially available.

Without the availability of 1.4 GHz equipment, many hospitals will not have any realistic options for migrating from the 460 MHz band. In creating the WMTS and developing the initial three year transition, the Commission recognized that the health care industry's needs could not be satisfied in a mere 6 MHz slice of spectrum![11] Thus, while the LMCC is correct that an extension of the freeze is appropriate, even a one-year extension period cannot commence until the FCC is certain that a sufficient amount and variety of WMTS equipment in the 1.4 GHz band is available from multiple vendors to reasonably satisfy the demand that will be created by the transition out of the 460 MHz band.

To that end, AHA believes it is incumbent upon the Commission and the FDA to work with manufacturers, if necessary through confidential inquiries that will protect each respondent's marketplace position, to confirm their reasonable expectations for the introduction

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[10] And as one health care consulting firm commented, "some of the hospitals have not been made fully aware of the significance of these proposals and may not have funded the capital dollars required to replace existing 460 MHz systems." Letter from Larry D. Ward, Facility Engineering Services, dated October 17, 2003, DA 03-3178.

[11] This is especially true in those several areas of the country where the 6 MHz is not available. Specifically, the 608-614 MHz band is not available in many geographic locations due to use of this band in a given location for current or future uses of TV Channels 36-38 or for radioastronomy or because nearby health care facilities already have utilized most of the channels in the band.

of commercially available WMTS systems in the 1.4 GHz band.[12] Based on current information, AHA and ASHE are convinced that their proposed initial time frame – which would leave the freeze in place *at least* until April, 2005, will be confirmed. If the FCC determines that manufacturers – who certainly will have incentives to be the first to market in the 1.4 GHz band in order to maximize their opportunity to serve these transitioning facilities – can bring sufficient quantities of product to market to meet likely demand, then there is no reason why a total 18 month extension will not be sufficient.

In conclusion, AHA and ASHE appreciate the Bureau's efforts to maintain the status quo until patient safety can be assured and avoidable interference events prevented. AHA and ASHE are dedicated to working with the Commission staff, the FDA, and the representatives of the land mobile community to fine tune the transition plan in a way that will best serve these lofty public interest objectives.

Respectfully submitted,

AMERICAN HOSPITAL ASSOCIATION
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[12] For understandable, competitive reasons, the manufacturers are reluctant to share details with AHA and ASHE, except on a confidential basis.

CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on November 10, 2003, the foregoing was served on all parties listed below by hand delivery.

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