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FILE

LAW OFFICES

KELLER AND HECKMAN

1001 G STREET, N.W.

SUITE 500 WEST

WASHINGTON, D.C. 20001

(202) 434-4100

TELEX 40 05551 "KELMAN"

TELECOPIER (202) 434-4646

JOSEPH E. KELLER
JEROME H. HECKMAN
WILLIAM H. BORGHESE, JR.
MALCOLM D. MACARTHUR
WAYNE V. BLACK
TERRENCE D. JONES
MARTIN W. BERCOVICI
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MARK L. ITZKOFF

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CAROL MOORS TOTH*
JOAN C. SYLVAIN*

SCIENTIFIC STAFF
DANIEL S. DIXLER, PH. D.
CHARLES V. BREDER, PH. D.
ROBERT A. MATHEWS, PH. D.
JOHN P. MODDERMAN, PH. D.
HOLLY HUTMIRE FOLEY
JUSTIN C. POWELL, PH. D.
JANETTE HOUK, PH. D.
LESTER BORODINSKY, PH. D.

TELECOMMUNICATIONS
ENGINEER
CHARLES F. TURNER

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 434-4130

March 30, 1992

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

RECEIVED

MAR 30 1992

Federal Communications Commission
Office of the Secretary

Re: ET Docket No. 92-9; Letter of Support for
Association of American Railroads Petition
for Clarification

Dear Ms. Searcy:

The American Petroleum Institute ("API"), by its attorneys, respectfully submits this letter in support of the Association of American Railroads ("AAR") Petition for Clarification of the Notice of Proposed Rule Making ("NPRM" or "Notice") in the above-referenced docket.

**I.
BACKGROUND**

The American Petroleum Institute is a national trade association representing over 200 companies involved in all aspects of the oil and gas industries, including exploration, production, refining, marketing and pipeline transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as a spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Transportation. The Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

API's member companies are authorized by the Commission to operate, among other telecommunications facilities, significant numbers of point-to-point microwave systems in the Private Operational-Fixed Microwave Service. These systems also ensure

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the safe processing and refining of these energy sources, and expedite ultimate delivery of petroleum products and natural gas to industrial, commercial and residential customers. Accordingly, API is concerned with the outcome of the instant proceeding since the radio spectrum that has been proposed for reallocation for emerging telecommunications technologies potentially displaces critical microwave systems operated by API's member companies.

API agrees with AAR that there is an immediate need for the Commission to clarify the intent of Paragraph 23 of the Notice. In this paragraph, the Commission tentatively concludes that it will grant applications for new facilities submitted after the adoption date of the NPRM (January 16, 1992) only on a secondary basis, but it seeks comments on the appropriateness of using January 16, 1992 as the cut-off date.

II. DISCUSSION

API wholeheartedly supports AAR's Petition for Clarification. API agrees with AAR that it is difficult to determine exactly what the Commission intends in Paragraph 23 of the NPRM. One interpretation is that the Commission fully intends to change the current application process, effective January 16, 1992, to limit to secondary status any authorizations granted pursuant to applications for new microwave facilities filed after that date. Because the Commission seeks comments on exactly when the new application process will take effect, a second interpretation could also mean that the Commission is merely proposing to license new facilities on a secondary basis and seeks comments only on the effective date. The Commission should therefore clarify what it intends to do in licensing new facilities for existing licensees.

Like AAR, API's members will be irreparably harmed by the Commission's apparent decision to license new facilities only on a secondary basis. Many of API's members have a need to expand or modify their existing facilities to accommodate growing operational needs. As AAR eloquently stated, "[i]f new microwave facilities were to be licensed on a secondary basis (i.e., subject to interference), critical functions . . . could be compromised." Equally important, API's members would be understandably reluctant to modify and upgrade their systems because of the risk of having to tolerate interference as a result of their secondary status.

API also seeks clarification of the policy intended to apply to applications for substantial changes to existing

Ms. Donna Searcy
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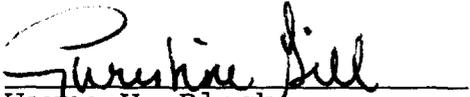
authorizations pursuant to Section 1.962 of the Commission's rules. Modifications and system upgrades are necessary to satisfy both the spectrum efficiency and operational demands of API's member companies. It is imperative that API's members have the flexibility to modify their existing systems while preserving their primary status in the 2 GHz band. Otherwise, pipeline monitoring, valve control, and other critical operations would be threatened.

If the Commission interprets Paragraph 23 to mean that licensing of new microwave facilities on a secondary basis took effect retroactively on January 16, 1992, the Commission's action is tantamount to a rule change, since, prior to that date, all licensing of new microwave facilities in the 2 GHz spectrum was on a primary basis. The Commission's action in imposing secondary status on all new facilities would represent a substantive modification of existing rules and should be subject to notice and comment as prescribed by Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553.

In conclusion, API agrees with AAR and respectfully asks that the Commission clarify Paragraph 23 of its NPRM in the above-referenced proceeding.

Respectfully submitted,

American Petroleum Institute

By: 

Wayne V. Black
Christine M. Gill
Tamara Y. Davis
Keller and Heckman
1001 G St., N.W.
Washington, D.C. 20001

Its Attorneys

Dated: March 30, 1992

CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, a secretary in the law firm of Keller and Heckman, do hereby certify that a true and correct copy of the foregoing Letter of Support for Association of American Railroads Petition for Clarification, has been sent to the following on this 30th day of March, 1992:

Chairman Alfred C. Sikes
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Sherrie P. Marshall
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Commissioner Andrew D. Barrett
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Dr. Thomas P. Stanley, Chief
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Dr. Bruce A. Franca, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Will McGibbon, Chief
Spectrum Engineering Division
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7130
Washington, D.C. 20554

William Torak, Deputy Chief
Spectrum Engineering Division
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7130
Washington, D.C. 20554

David Siddall, Chief
Frequency Allocation Branch
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7102
Washington, D.C. 20554

H. Franklin Wright, Chief
Frequency Liaison Branch
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7322
Washington, D.C. 20554

Thomas Mooring
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7330
Washington, D.C. 20554


Jacqueline Jenkins