

ORIGINAL  
FILE

RECEIVED

JUN - 1 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Amendments of Parts 2, 21 and 94 )  
of the Commission's Rules to )  
Accommodate Private Microwave )  
Systems in the 1.71-1.85 GHz )  
Bands and in the Bands Above )  
3 GHz )

RM-7981

To: The Commission

**STATEMENT IN SUPPORT**

Pursuant to the Public Notice issued by the Commission on May 1, 1992, the American Petroleum Institute (API), by its attorneys, hereby submits this Statement in Support of the Petition for Rule Making filed by the Utilities Telecommunications Council (UTC) to amend Parts 2, 21 and 94 of the Commission's rules to provide for use of frequencies in the bands 1.71-1.85, 3.7-4.2, 5.925-6.425, and 10.7-11.7 GHz by private microwave systems licensed under Part 94 of the Commission's rules. API supports UTC's request that the Commission defer action in its ongoing rulemaking ET Docket No. 92-9 to establish a "spectrum reserve" pending the outcome of separate proceedings to re-examine alternative allocations for this spectrum reserve and replacement spectrum for displaced users.<sup>1/</sup>

<sup>1/</sup> See Notice of Proposed Rule Making in ET Docket No. 92-9, FCC 92-20, released February 7, 1992.

No. of Copies rec'd 045  
List ABCDE

1. API 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 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 response to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's member companies are authorized by the Commission to operate significant numbers of point-to-point microwave systems in the Private Operational-Fixed Microwave Service (OFS) including many facilities licensed in the 1.8-2.2 GHz bands ("2 GHz Band") now targeted for reallocation to emerging technologies in ET Docket No. 92-9. These systems are used to ensure the safe processing and refining of petroleum and natural gas, and to expedite the ultimate delivery of these products to commercial, industrial and residential customers. Accordingly, API is vitally concerned about the potential reallocation of this spectrum

to emerging technologies in accordance with the proposals outlined in the Commission's ET Docket No. 92-9 Notice of Proposed Rule Making.

3. API believes that the Commission's proposals in the ET Docket No. 92-9 NPRM are premature. The numerous requests for further Commission action related to this proposal indicate that the Commission has not fully considered the alternatives available to it for designating spectrum for new or emerging technologies, nor has it adequately explained the details of its proposal or taken the steps necessary to ensure that current users of the 2 GHz band have replacement spectrum available. While API does not disagree with the fundamental concept that the Commission should identify spectrum for emerging technologies, in ET Docket No. 92-9, the Commission appears to have targeted the 1.8-2.2 GHz band without careful consideration of other, less drastic alternatives. In addition, the Commission has not adequately addressed how the spectrum needs of displaced users will be met.

4. A number of parties seek a fuller explanation of the nature of the Commission's proposals in ET Docket No. 92-9 in order that all important issues can be fully considered by the agency prior to making a reallocation

decision. To this end, API, together with the American Association of Railroads (AAR) and the Large Public Power Council (LPPC) requested the Commission to suspend the proceedings in ET Docket No. 92-9 so that the Commission could more fully examine the possibility of allocating spectrum in underutilized government bands at 1710-1850 MHz.<sup>2/</sup>

5. In the instant Petition, UTC has addressed one of the steps which the FCC should have taken before or simultaneously with the issuance of the NPRM in ET Docket No. 92-9 to make insure that there would be, in fact, appropriate and adequate replacement spectrum with equivalent reliability to the 2 GHz band available for displaced users. UTC has requested that the Commission amend Parts 2, 21 and 94 of the Rules and Regulations to provide for use of the frequencies in the bands 1.71-1.85, 3.7-4.2, 5.925-6.425, and 10.7-11.7 GHz by private microwave systems licensed under Part 94 of the rules in the event the existing 2 GHz OFS bands are reallocated. Subsequently, UTC filed a Petition for Issuance of a Further Notice of Proposed Rule Making addressing other fundamental flaws in the Commission's ET Docket No. 92-9 NPRM related to its

---

<sup>2/</sup> Petition to Suspend filed April 10, 1992.

failure to take a "hard look" at other bands equally well-suited as spectrum homes for emerging technologies.

Likewise, Alcatel, a manufacturer of microwave equipment, has filed with the Commission a detailed Petition for Rule Making to establish technical parameters for the use of replacement spectrum by private microwave licensees who may be displaced from the 2 GHz private microwave band.<sup>3/</sup>

6. API urges the Commission to take the opportunity presented by the numerous requests for further action in the ET Docket No. 92-9 NPRM<sup>4/</sup> to step back from that proceeding and to issue a Further Notice of Proposed Rule Making which (a) examines other reasonable alternative spectrum homes available for new or emerging technologies; (b) more fully and carefully explains the new technologies that would be eligible to obtain access to this spectrum and more carefully weighs the public interest benefits attributable to these new technologies; (c) more fully delineates the replacement spectrum that would be available for any

---

<sup>3/</sup> Alcatel Petition for Rule Making filed May 22, 1992.

<sup>4/</sup> See also Petitions for Clarification of the Docket No. 92-9 NPRM filed by AAR, LPPC and UTC and Request to Delay Comment Date filed by Alcatel; Requests for further explanation of the nature of the Commission's proposals have been requested by key members of Congress. See e.g. letter of April 6, 1992 from Sen. Ernest J. Hollings, Chairman, Senate Committee on Commerce, Science and Transportation, to FCC Chairman Alfred Sikes.

displaced users (whether they be 2 GHz private microwave users or other spectrum users); and (d) more rationally explains the deliberative process involved in reaching its conclusions. The ET Docket No. 92-9 NPRM is woefully deficient in all of these areas. The Commission is attempting to make a momentous decision which will impose significant costs on the American public. It cannot fulfill obligations under the Administrative Procedure Act, the Communications Act of 1934 and its own rules without more carefully examining the options before it. It should broaden its ET Docket No. 92-9 proceeding to accomplish this.

7. To this extent, API supports UTC's Petition for Rule Making, and urges the Commission to issue a Further Notice of Proposed Rule Making that would more globally review and examine all of the issues encompassed in the proposed reallocation of spectrum to emerging technologies. At a minimum, the Commission should re-examine the underlying study by the Office of Engineering and Technology (OET) which formed the basis of the agency's proposal to target the 1.8-2.2 GHz band for reallocation to new or emerging technologies. For example, no serious attention was given by OET to the prospect of placing new technologies in underutilized government bands at 1710-1850 MHz, nor

apparently, was a hard look given to the 2.50-2.69 GHz band (the 2.5 GHz band) presently allocated for Multichannel-Multipoint Distribution Service (MMDS) and Instructional Television Fixed Service (ITFS) as well as the Operational-Fixed Service (OFS). As is more fully discussed by UTC in its Petition for Issuance of Further Notice of Proposed Rule Making,<sup>5/</sup> this 2.5 GHz band satisfies substantially all of the criteria identified by the Commission in the OET study as an appropriate target band for new technologies. Looking at the numbers alone, the fact that there are only 3,500 licensed systems currently operating in these bands as compared to 29,000 OFS systems in the targeted 1.8-2.2 GHz band, would seem to demand that the 2.5 GHz band be given very serious consideration as a home for new technologies.

8. The fact that there are currently 24,000 applications on file with the Common Carrier Bureau for new MMDS facilities should also weigh in favor of allocating this band since pending applications have no legal claim to spectrum nor have the applicants made any financial investment in equipment. While 24,000 is not an insignificant number, the hardship imposed on these applicants should the Commission decide to reallocate MMDS

---

<sup>5/</sup> Filed on May 1, 1992.

spectrum certainly does not outweigh the financial and operational impact which the proposed reallocation would have on the 29,000 current licensees in the 2 GHz band and the public they serve. Furthermore, when one considers that many OFS systems are used for safety purposes, it is even more important for the Commission to closely examine other alternatives before displacing such users, particularly when many of the licensees in the MMDS band provide "entertainment" services for which substitutes are readily available.

9. The Commission should also take this opportunity to require experimental PCS applicants to examine the possibility of sharing spectrum with the few existing MMDS/ITFS systems that are now operating. Whereas many OFS licensees in the 1.8-2.2 GHz band cannot tolerate interference with communications relayed on their critical 2 GHz links, video entertainment transmission and educational programming can presumably tolerate some minimal level of interference without jeopardizing the safety of the public.

10. If the Commission is truly concerned about minimizing the disruptive impact of its proposed reallocation of the 2 GHz band, it should defer action in ET

Docket No. 92-9 and initiate a separate rulemaking to examine issues discussed above, including the technical parameters of any replacement spectrum that would be dedicated to displaced users. At a minimum, the FCC should examine whether or not the few existing MMDS and ITFS operational systems could be relocated to other bands. Secondly, if the Commission, after a detailed review of other alternatives, should return to its original proposal to dedicate the 2 GHz band for emerging technologies, at a minimum, it must fully delineate the prospects for replacement spectrum and examine seriously (1) the availability of the 1.71-1.85 GHz band for sharing, (2) the difficulties in shifting existing 2 GHz systems to higher bands such as the 4/6 GHz common carrier bands due to existing satellite operations, and (3) the impact of path length restrictions, loading requirements, coordination standards and similar issues on the realistic availability of certain bands as replacement spectrum for the current 2 GHz users.

**WHEREFORE THE PREMISES CONSIDERED** API supports the  
Petition for Rule Making filed by UTC in accordance with the  
Comments contained herein.

Respectfully submitted,

**AMERICAN PETROLEUM INSTITUTE**

By: Wayne V. Black  
Wayne V. Black  
Christine M. Gill  
Frederick J. Day

Keller and Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
(202) 434-4100

Attorneys for

Dated: June 1, 1992

**CERTIFICATE OF SERVICE**

I, Jacqueline Jenkins, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing Statement in Support, has been hand delivered to the following on this 1st day of June, 1992.

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

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

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

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

The Honorable Ervin S. Duggan  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
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

Mr. Robert Pepper  
Chief, Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C. 20554

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

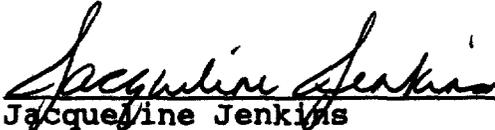
Cheryl A. Tritt  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

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

Terry L. Haines, Esq.  
Chief of Staff, Office of the Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

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

Jeffrey L. Sheldon, Esq.\*  
Sean A. Stokes, Esq.  
Utilities Telecommunications Council  
1140 Connecticut Avenue, N.W., Suite 1140  
Washington, D.C. 20036

  
Jacqueline Jenkins

\* Via U.S. First Class Mail