

**J. Should a New Technology Allocation be Inevitable, The Commission Must Designate a More Realistic Amount of Spectrum Than is Proposed.**

49. The 220 MHz proposed for allocation to emerging technologies significantly exceeds the total amount of spectrum now allocated by the Commission for both private and common carrier land mobile services. There is approximately 150 MHz of spectrum now dedicated to land mobile usage under Part 22 (common carrier) and Part 90 (private radio). Thus, the entire private radio and common carrier land mobile community has survived, and indeed has flourished in many markets, on considerably less spectrum than the Commission proposes to make available for emerging technologies. This clearly indicates that the amount of spectrum identified in the Notice for emerging technologies is excessive.

50. As discussed above, the Commission does not offer any compelling explanation for its determination that emerging technologies warrant an allocation of 220 MHz. Rather, it appears that the Commission has seriously overstated the spectrum requirements for emerging technologies. Unless this situation is corrected, the Commission's allocation of 220 MHz for emerging technologies

could be found to be arbitrary and capricious. Accordingly, at a minimum, API respectfully urges the Commission to conduct a more deliberate and more profound examination of the legitimate spectrum requirements for the emerging technologies services. The Commission must underpin its decision, from a procedural standpoint, by allocating a more realistic amount of spectrum for the services it intends to foster.

### **III. CONCLUSION**

51. The spectrum in the band 1850-2200 MHz has been used successfully for fixed microwave systems essential to protecting the public and environmental safety for many years. The Commission's proposals in the instant proceeding threatened this long-standing use. API believes the Commission has a statutory duty to base its allocation decisions on a thorough analysis of the facts and a clear showing that the decisions reached will best serve the public interest, convenience and necessity. Due to the serious public impact which the proposed reallocation decision will have, as well as the lack of evidence that the proposed new technologies can only be accommodated by use of the 2 GHz OFS spectrum. API believes the proposed reallocation is unwarranted. API urges the Commission to

fully analyze all relevant factors involved prior to rendering any final decision in this proceeding.

52. When full analysis is performed, API believes the Commission will find that (a) the proposed reallocation does not serve the public interest; (b) allocation of 2 GHz OFS spectrum to new technologies is inappropriate, and (c) that other spectrum choices can provide a better and less disruptive location for new technologies. The Commission should not act as proposed in its Notice; to the contrary, it should decline to make any new technology allocation until a clearer need for such an allocation is demonstrated. Alternatively, should the Commission be convinced that a new technology allocation is required in the near term, the Agency should perform a detailed analysis to determine how a spectrum accommodation for new technologies could be provided without disrupting existing fixed services.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully requests the Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**AMERICAN PETROLEUM INSTITUTE**

By: Wayne V. Black  
Wayne V. Black  
Christine M. Gill  
Frederick J. Day  
Marc Berejka  
Rick D. Rhodes  
Tamara Y. Davis

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

Its Attorneys

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## CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing Comments, has been sent to the following via hand delivery on this 8th 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

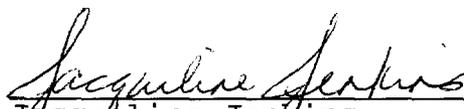
Bruce A. Franca, Deputy Chief  
Office of Engineering and Technology  
Federal Communications Commission  
2025 M Street, N.W., Room 7002  
Washington, D.C. 20554

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

Thomas J. Keller, Esq.\*  
Lawrence R. Sidman, Esq.  
Jacqueline R. Kinney, Esq.  
Verner, Liipfert, Bernhard, McPherson  
and Hand, Chartered  
901 15th Street, N.W., Suite 700  
Washington, D.C. 20005  
Counsel for the Association of American  
Railroads and the Large Public Power  
Council

  
\_\_\_\_\_  
Jacqueline Jenkins