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BEFORE THE

Federal Communications Commission RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum to
Encourage Innovation in the Use
of New Telecommunications
Technologies

)
)
) ET Docket No. 92-9
)
) RM-7981
) RM-8004

To: The Commission

**STATEMENT OF PARTIAL SUPPORT
AND PARTIAL OPPOSITION**

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Dated: November 8, 1993

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**STATEMENT OF PARTIAL SUPPORT
AND PARTIAL OPPOSITION**

The American Petroleum Institute ("API"), by its attorneys, pursuant to the Commission's invitation, hereby submits this Statement in Partial Support and Partial Opposition to Petitions for Reconsideration ("Petitions") in ET Docket No. 92-9 referenced in the Commission's Public Notice.^{1/}

I. INTRODUCTION

1. 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 spokesperson before

^{1/} 58 Fed. Reg. 54591 (October 22, 1993).

federal and state regulatory agencies and legislative bodies. The Telecommunications Committee is API's primary committee concerned with telecommunications regulatory matters. It is supported by licensees that are authorized by the Commission to operate, among other facilities, point-to-point microwave systems in the Private Operational-Fixed Microwave Service ("POFS") in the 1.85-1.99 GHz, 2.13-2.15 GHz and 2.18-2.20 GHz ("2 GHz") bands which are being reallocated by the Commission in this proceeding.

2. API has participated in every phase of this proceeding and remains concerned about the relocation of fixed microwave licensees from current spectrum assignments which offer the reliable telecommunications capabilities necessary to perform sensitive petroleum and natural gas production and transportation functions. Accordingly, API is pleased to have this opportunity to comment on the Petitions for Clarification and/or Reconsideration which have been filed in response to the Commission's adoption of 2 GHz transition procedures.

II. COMMENTS

A. While API Generally Supports the Commission's Transition Plan, Further Clarification and/or Modification Would be Beneficial.

3. API finds the market-based transition plan adopted by the Commission to be generally acceptable. API is pleased to note that the Commission's plan retains most provisions of the relocation proposals enunciated earlier by the Commission, including new technology licensee funding of transition activity. Nonetheless, API agrees with the positions expressed in the Petitions of the Association of American Railroads ("AAR") and the Utilities Telecommunications Council ("UTC") that certain clarifications or changes in the transition rules would prove beneficial.

B. The Commission Should Clarify the Start Date of the Two Year Voluntary Negotiation Period.

4. API notes that clarification is sought by UTC and AAR concerning the commencement date of the Commission's two-year "voluntary negotiation" period for spectrum assigned to licensed PCS services.^{2/} The Commission's rules, as adopted, state that the two-year voluntary negotiation period will commence upon FCC "acceptance of applications for emerging technology

^{2/} Petition of UTC at 3. Petition of AAR at 4-5.

services". API agrees that such an approach is workable only if all emerging technology interests seeking 2 GHz spectrum commence licensing at the same time.^{3/} Moreover, under this approach the voluntary negotiation period offers very little migration notice to incumbent 2 GHz microwave licensees in market areas where licensing does not commence until a later date.

5. Accordingly, UTC and AAR suggest that the two-year voluntary negotiation period for licensed PCS frequencies should not commence upon the date when the Commission accepts preliminary auction or lottery applications in a given band, but rather should commence on the date of acceptance of the formal requests for frequency assignment and licensing in each specific market following the selection of tentative licensees by auction.^{4/}

6. API agrees that commencement of the two-year voluntary transition period should commence on the date of market-specific requests for frequency assignments and licensing for PCS. Unless such clarification is forthcoming, delays between acceptance of preliminary applications and final selection of new technology licensees could eliminate the opportunity for voluntary negotiations between incumbent licensees and new technology interests. Further, such a clarification will spare incumbent fixed licensees the

^{3/} Petition of UTC at 3.

^{4/} Petition of UTC at 3. Petition of AAR at 4-5.

inconvenience and cost of engaging in futile negotiations with the possibly large number of emerging technology applicants who will not actually prevail at auction. API reminds the Commission that such costs ultimately would be assumed by the PCS licensee as a relocation cost. Accordingly, the requested clarification will minimize the costs of PCS service deployment.

C. The Commission Should Expand the Availability of Tax Certificates as a Relocation Incentive.

7. API agrees with UTC and AAR^{9/} that the Commission's decision to restrict the availability of tax certificates to those 2 GHz microwave licensees which relocate during the initial two-year negotiation period applicable only to licensed PCS spectrum, will unduly restrict employment of tax certificates to facilitate relocation.^{9/} Incumbent licensees and PCS entrants in band segments or in geographic locations where emerging technologies do not develop during the initial two-year voluntary negotiation period should not be denied the added negotiation flexibility which the use of tax incentives allows. Moreover, the Commission's restriction will completely eliminate the use of tax certificates to enhance relocation negotiations involving 2 GHz microwave licensees now operating in spectrum designated for the deployment of unlicensed devices.

^{9/} A Petition for Reconsideration seeking expansion of tax certificate offerings was also filed by The Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management ("UTAM").

^{9/} UTC Petition at 6. AAR Petition at 6-7.

8. The Commission should reconsider its decision concerning the issuance of tax certificates and make these certificates available in all relocation cases. The availability of tax certificates may, in many instances, help lessen transition negotiation difficulties; accordingly, tax certificates should be made widely available.

D. API Only Supports "Retuning" as a Voluntary Relocation Technique Where Fully Accepted by the Incumbent 2 GHz Fixed Licensee

9. AAR has requested that the FCC interact with the National Telecommunications and Information Administration ("NTIA") to ensure the assignment of spectrum in the 1710-1850 MHz federal government microwave band as a "permanent relocation" site for those incumbent licensees who volunteer to "retune" their existing fixed facilities.^{2/} AAR notes that long term 2 GHz spectrum assignments could be made available in the federal government 2 GHz band to displaced licensees, and that such assignments could allow "retuning" of existing fixed links rather than actual system replacement.

^{2/} AAR Petition at 2-4.

10. API agrees with AAR that retuning could prove useful in those limited instances, where only a single migration to a long term replacement 2 GHz spectrum assignment is possible. API also agrees that in those specific cases, retuning may reduce the overall costs associated with relocation thereby providing transition cost relief to emerging technology service licensees.^{5/} Nonetheless, API agrees with AAR's retuning proposal only in cases where permanent spectrum assignments in the federal government 2 GHz band could be obtained for replacement purposes, and where migration to such frequency assignments is fully acceptable to the displaced licensee. Moreover, in any cases where retuning may be used as a relocation method, all migration costs must be assumed by the emerging technology licensee.

11. API is extremely alarmed at the retuning proposal of Apple Computer, Inc. ("Apple"). API understands and agrees with Apple that deployment of unlicensed PCS will require completely cleared spectrum. Nonetheless, the potential short term spectrum gains for unlicensed PCS which could be realized through Apple's retuning plan, clearly are outweighed by the plan's potential to create burdensome and costly migration problems.

12. Apple provides no additional information or support for its retuning plan beyond that previously rejected by the Commission for all POFS licensees

^{5/} Id.

except certain grandfathered public safety microwave links now operating in the 1910-1930 MHz range.^{9/} Apple's proposal would trigger forced "multiple migrations" for incumbent licensees along with concomitant technical, reliability and migration cost inflation problems. API continues to believe that Apple's approach is unrealistic and short-sighted, and must be rejected.^{10/} API is convinced that the vast majority of incumbent fixed licensees will act reasonably and in accord with the Commission's transition plan. API believes that the time frame adopted by the Commission is "minimally adequate" to allow for rational planning and migration of POFS links which are vital to protect the public safety. The administrative and logistical problems inherent in Apple's proposed short term "double migration" plan are unnecessary and unacceptable. Accordingly, the Apple proposal must be rejected.

III. CONCLUSION

13. API is in general accord with the positions expressed by AAR and UTC concerning the transition commencement dates. Moreover, API agrees with AAR, UTC and UTAM that tax certificates must be made widely available to migrating fixed 2 GHz licensees. Where permanent 2 GHz assignments may be

^{9/} Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9 58 Fed. Reg. 46547 (September 2, 1993).

^{10/} See generally, API Response to Emergency Petition of Apple Computer, Gen. Docket No. 90-314 (September 15, 1993).

available for retuning, and where migrating incumbent 2 GHz fixed licensees voluntarily agree to retuning procedures, API agrees with AAR that the retuning approach could be beneficial as part of an overall relocation plan. However, API strenuously opposes the short-sighted and unworkable retuning plan of Apple Computer and submits that the Commission must reject this plan in its entirety.

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

Respectfully submitted,

The American Petroleum Institute

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Dated: November 8, 1993

CERTIFICATE OF SERVICE

I, Terri Thomas, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing Statement of Partial Support and Partial Opposition has been served this 8th day of November 1993 by hand delivery to the following:

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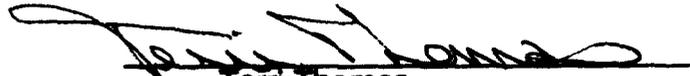
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