

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 2.106 of the)
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use by the)
Mobile Satellite Service)

ET Docket No. 95-18

To: The Commission

**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

THE AMERICAN PETROLEUM INSTITUTE

Wayne V. Black
John Reardon
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100

Its Counsel

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List A B C D E

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. PRELIMINARY STATEMENT	2
II. COMMENTS	3
A. API Strongly Opposes Any Diminution Of Microwave Incumbents' Rights	3
1. The Relocation Rules are Well-Designed	3
B. Reimbursement Is Appropriate for Incumbent Relocation	6
C. Depreciated Reimbursement Would Be Inequitable	7
D. A Sunset Date Would Be Counterproductive	9
E. Incumbents Should Be Reimbursed for Both Halves of a Channel Pair	10
III. CONCLUSION	11

SUMMARY

The American Petroleum Institute ("API") supports the Federal Communications Commission's ("Commission") decision to adopt the relocation framework which was so carefully crafted for emerging technologies services, such as the Mobile Satellite Service ("MSS"), in ET Docket No. 92-9. This framework was established as the result of an intricate balancing by the Commission of two competing interests: those of the new emerging technologies licensees and the existing incumbent licensees.

In its Further Notice, however, the Commission poses several questions which raise significant concern among API's members. Specifically, the Commission seeks comment on whether it should fundamentally rewrite those relocation rules so that incumbents receive little or no reimbursement in exchange for being ejected from their existing assignments. This proposal is entirely unacceptable to API. After cooperating with PCS licensees to relocate systems from the band 1850-1990 MHz so successfully, API is surprised that the Commission might see fit to eradicate incumbent rights. Because the relocation rules provide a balanced response to the needs of both incumbents and new licensees, API urges the Commission to adhere to them, as it has indicated it would in the Report and Order.

Similarly, there should be no sunset date adopted for the benefit of MSS. Such a provision would simply cause delays in initiation of service and would provide MSS licensees with a disincentive to negotiate during later years. Finally, API believes that both halves of a 2.1 GHz channel pair must be relocated where harmful interference would occur to one-half of the pair. MSS proponents who cause that interference should pay the full cost of relocation of that channel pair.

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The American Petroleum Institute ("API"), pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), by its attorneys, hereby respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Commission in the above-styled proceeding.^{1/}

^{1/} First Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 95-18 (March 14, 1997).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and 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 Information Systems Committee. One of the Telecommunications Committee's primary functions is to evaluate and develop responses to state and federal proposals affecting telecommunications services and facilities used in the oil and gas industries. Consistent with that mission, it also reviews and comments, where appropriate, on other proposals that impinge on the ability of the energy industries to meet their telecommunications needs.

II. COMMENTS

A. **API Strongly Opposes Any Diminution Of Microwave Incumbents' Rights**

1. **The Relocation Rules are Well-Designed**

2. In its Report and Order, the Commission wisely adhered to the relocation rules established in the lengthy emerging technologies proceeding, ET Docket No. 92-9. In that proceeding, both microwave incumbents and emerging technologies providers argued long and hard to achieve a successful balance between two competing interests: (1) incumbents' need to continue providing their vital services in support of their core businesses while protecting the public's safety; and (2) the emerging technologies providers' obligation to promptly roll out cost-efficient new services for the American public. The outcome of this protracted weighing of the two competing interests was the relocation paradigm.

3. This paradigm has been successful in the PCS context. At the recent Spring Meeting of the API Telecommunications Committee, members of the Microwave Committee were polled concerning the status of relocation of their microwave systems. Fully 100% of members who had been contacted by PCS entities had negotiated and concluded agreements concerning their microwave systems. The only

members polled at the meeting who had not concluded agreements with PCS licensees had not yet been contacted by PCS licensees. This is concrete evidence that the relocation rules are working well.

4. In its First Report and Order concerning the cost sharing rules, in WT Docket No. 95-157, the Commission observed that "the existing relocation procedures for microwave incumbents adopted in the *Emerging Technologies* docket were the product of extensive comment and deliberation prior to the initial licensing of PCS."^{2/} Because of the extensive examination which culminated in the creation of these relocation rules, it is no surprise that they are working well and that many emerging technologies providers have successfully relocated incumbents as a result. In fact, Chairman Hundt and Commissioner Quello both felt so strongly about the success of the relocation rules that they issued separate statements that support the relocation rules created in ET Docket No. 92-9.^{3/} Upon analyzing the record to date, API believes that the Commission can reach but one conclusion: the guarantee of comparable replacement facilities in the event of forced incumbent relocation provides the backdrop against which

^{2/} First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157, 11 FCC Rcd 8825 (April 30, 1996).

^{3/} First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157, 11 FCC Rcd 8825 (April 30, 1996).

meaningful negotiations occur and mutually satisfactory relocation agreements are reached.

5. Despite the clear success of the relocation rules, the Commission in its Further Notice of Proposed Rule Making ("Further Notice") invited comment on whether or not to fundamentally alter these rules. First, the Commission inquired whether it should consider the age and value of incumbents' equipment in determining costs in the event of involuntary relocation. Further Notice at ¶ 80. The Commission also asked whether it should adopt a sunset date ten years after the beginning of the voluntary negotiation period for relocation or some other date. Further Notice at ¶ 78. Finally, the Commission invited comment on whether it should alter the negotiation periods.

6. API is disappointed that the Commission would even entertain such fundamental alterations, particularly in light of the protracted rule making which established these rules and the clear success of the relocation paradigm thus far. This wholesale re-examination of established principles is, for incumbents, an unwelcome additional burden in the midst of an already disruptive reallocation of their spectrum.

7. Rules are made to be relied upon, and should not be rescinded lightly. API member companies and other incumbents have conducted their business

operations in reliance upon these relocation rules since the emerging technology rules were first created. Both incumbents and emerging technologies providers had ample opportunity to participate in the development of the relocation rules in the emerging technologies proceeding, ET Docket No. 92-9. API does not believe that circumstances have changed since then which would warrant such a wholesale rescission of established Commission policies.

B. Reimbursement Is Appropriate for Incumbent Relocation

8. In Comments, Reply Comments and several *ex parte* meetings in this proceeding, the MSS industry has attempted to persuade the Commission to entirely abandon or substantially reduce, incumbents' relocation rights. The MSS industry believes this is appropriate because spectrum sharing, in its view, has somehow been proven to work. It has not.

9. As a further basis for their radical proposal, the MSS industry claims that, if they were forced to pay to relocate incumbents, then they would not be able to provide cost-justified service. API urges the Commission not to be swayed by these baseless claims. Numerous PCS licensees are providing cost-justified service, even after paying to relocate incumbents. Moreover, these PCS licensees bid over \$20 billion for their

licenses -- a cost which MSS proponents would be entirely relieved of if the Commission does not auction these licenses.

10. MSS will be a global mobile service. Since few countries in the world are as heavily encumbered in the 2.1 GHz band as the United States, the majority of relocation costs will occur in the United States. Communications systems operated in 2.1 GHz band are employed to ensure that hazardous operations, including the production of petroleum, natural gas, and electricity, as well as the management of railroad operations and public safety services are conducted in a safe and efficient manner. These systems are valuable for protection of public safety, worker safety and the environment. Reimbursement is only fitting for relocation of such important systems.

C. Depreciated Reimbursement Would Be Inequitable

11. API members are proud to have played a vital role in the construction and operation of domestic private microwave communications facilities. These systems are, without a doubt, among the most reliable in the world. Yet MSS proponents would have the Commission believe that these facilities are aged, worthless, and even antiquated. They would have the Commission believe that reimbursement for the depreciated value of these systems would be sufficient. API vehemently objects to this proposal because it would force API member companies to subsidize the introduction of for-profit MSS

service. Reimbursement of depreciated value does not render an incumbent whole because it must still purchase new equipment to replace that removed from service.

12. API is particularly troubled by this proposal because much of the proposed MSS communications would be provided by foreign-owned entities. Thus, adoption of the proposal to provide little or no reimbursement would be tantamount to a significant transfer of funds from American incumbent licensees to foreign companies holding MSS licenses.

13. The claims of some entities in the MSS industry that insufficient demand exists to pay for these start-up costs are similarly unfounded. Not only will global MSS companies reach a vast number of subscribers around the world, but those subscribers will often be located in remote locations where no other alternative service exists to that provided by the MSS industry. Thus, far from being cash-strapped, MSS providers could easily realize an unprecedented windfall of profits.

14. It is interesting to note that, throughout history, whenever a dramatic new technology is introduced, similar arguments were disproved by subsequent events. For example, when the New York City subway system was first proposed and under construction, numerous entities protested that the start-up costs of relocating all those homes and businesses would never be recovered through a commercially viable system.

Anyone who has been to New York and ridden the sprawling subway system knows that this prediction proved to be grossly inaccurate.

15. Similarly, implementation of MSS will improve and expand the availability of an existing service for which there is constantly increasing demand: communications. The International Telecommunications Union estimates that over 60 million people are currently waiting for telephone service worldwide. See *Communications Daily*, June 3, 1997, at 12. The cost of relocating 2.1 GHz incumbents will be minuscule when compared to the profits to be gained by MSS providers. Therefore, API strongly urges the Commission not to be persuaded by MSS claims that the MSS proponents might abandon their service plans if they are forced to reimburse incumbents for relocation. The history of commercial enterprise, and the huge untapped marketplace available to MSS, refute their arguments.

D. A Sunset Date Would Be Counterproductive

16. The Commission, in its Further Notice, invited comment on whether it should adopt a sunset date after which the MSS provider would no longer be required to pay relocation costs. Further Notice at ¶ 75. API opposes adoption of any sunset date. API believes that a sunset date would provide a disincentive for MSS licensees to relocate microwave incumbents as that date approaches.

17. If both an incumbent and MSS licensee can co-exist without interference, then there should be no need for an arbitrary deadline by which incumbents would become secondary. Similarly, if both parties cannot co-exist due to interference problems, then an incumbent should be relocated and reimbursed for its facilities, regardless of when that relocation occurs. Otherwise, the Commission will create incentives for MSS licensees to delay service to new areas and to forestall negotiations in subsequent years.

E. Incumbents Should Be Reimbursed for Both Halves of a Channel Pair

18. In the Further Notice, the Commission asked whether it should require relocation only of links in the 2180-2200 MHz band, leaving situate the paired links in the 2130-2150 MHz band. Further Notice at ¶ 79. API strongly opposes adoption of such a plan because incumbents would be forced to relocate from the 2130-2145 MHz band if the paired link in the 2180-2200 MHz band is relocated by MSS. Under such a forced relocation, API believes that MSS proponents should be required to pay for reimbursement of both halves of the links. After all, it is solely because of the MSS licensee that the full 2.1 GHz pair cannot be utilized.

19. The Commission also asks whether it is possible to pair the 2130-2150 MHz band with “widely separated” assignments. Further Notice at ¶ 79. The

Commission has designated the 6 GHz band as the nearest relocation spectrum for incumbents. There is no equipment that operates with paired assignments in such widely separated bands as the 2.1 GHz and 6 GHz bands. Moreover, even if equipment were available, the distinctly different propagation characteristics of the two bands strongly suggest that the results would be a highly unreliable link. Thus, the 2130-2145 MHz band assignments should be relocated along with the 2180-2200 MHz band assignments, and such relocation should be entirely reimbursed by the MSS provider.

III. CONCLUSION

20. The MSS industry should be held to the same relocation standard as other emerging technologies providers. Most notably, MSS licensees should be required to fully reimburse incumbents for relocation costs. The Commission should reject imposition of a sunset date because it would be counter-productive in the negotiation process during later years. Finally, API urges the Commission to require MSS licensees to pay for relocation of both halves of a channel pair; after all, but for the MSS licensee, the incumbent system would be fully intact.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and requests the Commission to act in a manner consistent with these views.

Respectfully submitted,

THE AMERICAN PETROLEUM INSTITUTE

By: *Wayne V. Black*
Wayne V. Black
John Reardon
Keller AND Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Its Counsel

Dated: June 23, 1997