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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate)	
Spectrum at 2 GHz for Use by the)	
Mobile Satellite Service)	

To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

AMERICAN PETROLEUM INSTITUTE

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SUMMARY

In its Further Notice, the Federal Communications Commission (“Commission”) invited comment on whether or not to impose a sunset date after which incumbents in the 2.1 GHz band would be forced to relocate at their own expense. The American Petroleum Institute (“API”) believes that such a sunset provision would be counter-productive. A sunset date would significantly curtail the incentive of Mobile Satellite Service (“MSS”) operators to negotiate for voluntary relocation of incumbents. A sunset date would also encourage MSS operators to forego expending the effort necessary to share spectrum in favor of waiting until they can simply force incumbents to vacate the 2.1 GHz band. Finally, the sunset date proposal is flawed because it overlooks the fact that many incumbents might be able to continue to operate their facilities, particularly in remote locations, without causing or receiving any interference to or from MSS systems.

API does not share the conviction expressed by MSS proponents that sharing between Fixed Service (“FS”) incumbents and MSS operators will be feasible. To the contrary, API cautions the Commission that the ongoing studies of sharing are not yet concluded; no determinations have been made on the issue of whether sharing with even one MSS handheld unit will be feasible. In light of the important public safety functions performed by most 2.1 GHz band incumbents, API urges the Commission to closely

scrutinize the conclusory statements made by the MSS representatives concerning the feasibility of sharing.

In its Report and Order in this proceeding, the Commission wisely adopted the relocation framework developed for all Emerging Technologies, including MSS. Despite this clear decision, the MSS industry continues to attack the Commission's decision to protect the rights of incumbents to a fair negotiation period and reimbursement for comparable facilities. API urges the Commission to adhere to its rules and to recognize that the MSS industry is simply trying to shift a portion of its legitimate costs to incumbents by abolishing its reimbursement obligations under the rules.

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The American Petroleum Institute ("API"), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), by its attorneys, hereby respectfully submits these Reply Comments regarding Comments filed by other participants in this matter in response to the First Report and Order and 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. REPLY COMMENTS

A. A Sunset Date Would Delay Negotiations and Impede Sharing

1. In its Further Notice, the Commission proposed establishing a ten-year sunset date after which fixed system ("FS") incumbents in the bands 2130-2150/2180-2200 MHz ("2.1 GHz band") would no longer be entitled to receive relocation costs and would be forced to cease operations within six months of written notification by an MSS operator. Further Notice at ¶ 77. The ten-year period would begin to run when the voluntary negotiation period commences. Further Notice at ¶ 78.

2. In its Comments, the MSS Coalition urged the Commission to adopt a sunset date of January 1, 2005, after which no reimbursement would be due to the 2.1 GHz incumbents. MSS Coalition at 6. In light of the fact that the Commission is not expected to conclude this proceeding until 1998, the Commission's proposed sunset date would not end until 2008 at the earliest. Thus, the MSS Coalition's proposal would significantly reduce the relocation period prior to a sunset date.

3. The MSS Coalition argued that such an early transition of FS systems is justifiable because FS incumbents have been on notice since adoption of the Emerging Technologies rules in 1992 that the 2.1 GHz spectrum would be reallocated to another

service. MSS Coalition at 8. The MSS Coalition then suggests that, by 2005, most of the equipment used by most FS incumbents "should be fully amortized or in need of replacement by more efficient digital equipment." MSS Coalition at 8.

4. API agrees with the Comments filed by AAR and APCO, both of whom noted that a sunset date would delay band clearing and would be inconsistent with the Commission's policy of encouraging parties to share spectrum. AAR at 6-7; APCO at 6. API believes that until an MSS licensee requires use of the spectrum and pays for relocation, the incumbent should retain both its primary status and its right to reimbursement. Otherwise, the Commission will create incentives for MSS licensees to forego negotiations in favor of waiting until the sunset date. Similarly, if sharing is proven to be feasible, then a sunset date would provide MSS licensees with a significant disincentive to expend resources in order to share the spectrum with FS licensees. Instead, the MSS licensees would simply wait out the sunset date.

5. ICO, a member of the MSS Coalition, urged the Commission to renew FS licenses in the 2.1 GHz band subject to a condition that they convert to secondary status on January 1, 2000. MSS Coalition at n.39. The MSS industry's zeal to deny incumbents reimbursement after a few years ignores the fact that those incumbent systems will still be operational and that incumbents will still need to expend considerable sums of money to relocate their systems to a new frequency band. In its

Comments, AAR pointed out that the useful life of microwave equipment can be as long as 25 years. AAR at 7. API opposes introduction of a sunset date because it is counterproductive to the negotiation process and impedes efforts to share spectrum. However, should the Commission adopt such a proposal, API urges the agency to at least extend any sunset period beyond ten years in order to reflect the useful life of incumbents' equipment. See, AAR at 7.

B. Satellite Proponents Overstate the Likelihood of Sharing

6. In its Order, the FCC adopted relocation rules developed in the Emerging Technologies proceeding, ET Docket No. 92-9. Where harmful interference would occur, these relocation rules require MSS licensees to either pay for relocation of incumbents to **comparable facilities** or reach a voluntary agreement with incumbents before commencing service in the 2.1 GHz band. The linchpin to this relocation is harmful interference. Thus, if the parties can share the spectrum without harmful interference from the FS to the MSS, and from the MSS to the FS, then no relocation is necessary.

7. In their Comments, the MSS industry representatives uniformly overstate the likelihood that FS and MSS can share the 2.1 GHz band. According to the MSS Coalition, MSS/FS sharing is feasible during a transition period, after which incumbents would be required to relocate at their own expense. MSS Coalition at 5, 12.

8. Members of the Spectrum & Orbit Utilization Section (SOUS) of the Satellite Communications Division of the Telecommunications Industry Association (TIA) and members of TIA's Fixed Point-to-Point Communications Section of the Network Equipment Division are meeting regularly as a Joint Working Group (JWG) to study the feasibility of MSS/FS sharing in the 2.1 GHz band. In Comments filed by SOUS, the satellite members of the JWG declared their belief that the JWG will develop "mutually acceptable sharing rules which will enable the FS and MSS to share the 2165-2200 MHz band for some period of time in order to enable a gradual, rather than abrupt, phased transition between the FS and MSS in the band." SOUS at 5.

9. An API representative attends every JWG meeting and participates actively in this process. API members would be delighted if they could remain at their current locations and operate their systems indefinitely without causing or receiving harmful interference to and from MSS systems. Obviously, sharing the spectrum is the least disruptive and least costly alternative for API members.

10. The problem with sharing, as even the MSS industry acknowledges, is that FS and MSS cannot share the spectrum once the MSS systems are loaded to a certain point. The MSS industry would have the Commission believe that the unacceptable loading point is reached at some distant time in the future. API believes that the point of unacceptable loading could be reached as soon as just one MSS unit is operational. As

Burlington Northern stated in its Comments, "any sharing scheme which relies upon even momentary delays in access to capacity cannot be considered feasible" in light of the significant and compelling safety demands met by so many of the 2.1 GHz band incumbents. Burlington Northern at 6.

11. The MSS handheld units will roam over a nationwide service area and will therefore be capable of operating from anywhere at any time. Due to the critical nature of pipeline control systems and remote well-field monitoring facilities, API members cannot tolerate even one outage. API is, however, keenly interested in efforts to avoid this problem and to share the spectrum. However, API does not share the optimism expressed by both the MSS Coalition and the SOUS satellite companies. Clearly, their belief that sharing has already been shown to be feasible, or soon will be, is premature.

12. API notes that after several months of diligent study, the TIA JWG has not yet concluded that sharing is feasible with even one MSS handheld unit. To the contrary, the JWG is attempting to develop criteria to determine this initial issue: is sharing feasible under any circumstance? Once this issue is resolved, then the JWG can either determine that sharing is never an option, or it can develop standards to govern when sharing will be successful. Until this initial question is answered, however, API believes it is disingenuous for MSS proponents to suggest that sharing is or will be feasible.

13. Moreover, API emphasizes that no one in the MSS community seems interested in the likelihood that FS systems will cause significant levels of harmful interference into the MSS systems. It is curious that this issue is side-stepped by the MSS community; apparently, it would rather risk receiving harmful interference than pay to avoid it through relocation of incumbents. The Commission, however, should not permit the MSS industry to skirt this issue. The American consumer deserves the best quality MSS possible. This can be realized by clearing the 2.1 GHz band of FS incumbents who cause harmful interference into MSS handsets. Otherwise, MSS providers could just be offering warmed-over cellular service, with its scratchy signal and chronic outages. The Commission should direct MSS to be a truly Emerging Technology by relocating incumbents where interference occurs *to MSS from FS*, as well as to FS from MSS.

C. Relocation Reimbursement

14. Not surprisingly, the MSS Coalition has requested the Commission to entirely eliminate incumbents' rights to reimbursement for relocation of existing facilities in the 2.1 GHz band. The MSS Coalition alleges that the Emerging Technologies rules for relocation, if applied, would "cripple" the MSS industry and place MSS operators in a "highly inequitable bargaining position" vis-a-vis incumbents. MSS Coalition at 14.

15. The MSS industry is hoping that the Commission will adopt a sunset date and that sharing will work long enough so that it can avoid any and all relocation expenses. If sharing does not work, then *someone* will have to pay to relocate incumbent systems. The MSS industry wishes to compel microwave incumbents to pay for the relocation of their own vital systems in order to clear spectrum for the benefit of commercial MSS providers. API does not believe that this result even approaches the concept of fair play.

16. Even if the Commission does not change its current rules, incumbents are already sacrificing a great deal for the benefit of MSS providers. Sooner or later, incumbents will be forced off of their existing, operating systems. In addition, incumbents have already incurred, and will continue to incur, significant costs related to this forced relocation for which they will never be reimbursed. For example, as some incumbents pointed out in their Comments, the costs of moving to higher frequencies are greater than simply replacing new radios; *i.e.*, the different radio propagation characteristics in frequencies above 5 GHz may require construction of additional microwave repeater sites between incumbents' existing stations. AAR at 6; APCO at 8.

17. In addition, many incumbents will incur costs from operating on a transitional basis during the conversion to new facilities. These costs will include expenses for leasing temporary commercial service and costs of constructing and

operating temporary facilities for use on an interim basis while the transition process occurs. Given the costs of relocating to less favorable spectrum, along with the attendant business disruption and transition costs, MSS providers should feel fortunate that they are only required to reimburse incumbents for comparable replacement facilities, rather than the actual costs of relocating incumbents. Instead of expressing gratitude that this valuable spectrum has been reallocated for their express benefit, the MSS industry complains that not enough has been done for them, that they somehow are in a "highly inequitable" position vis-a-vis incumbents whom they are forcing out of the 2.1 GHz band. MSS Coalition at 12.

18. MSS providers even proclaim that they deserve preferential treatment vis-a-vis PCS and other Emerging Technologies. For example, the MSS Coalition protests that, because MSS is a national service, negotiating agreements with incumbents nationwide would be "unworkable". MSS Coalition at 15. API believes the exact opposite: because the MSS industry is more concentrated than the PCS industry, there will be fewer parties involved in the negotiations. Likewise, PCS was licensed in stages and blocks, which meant that not all the parties sat at the table at one time, whereas MSS will be licensed simultaneously, so the licensees will be readily identifiable. As APCO noted in its Comments, from an incumbent's standpoint, "the identity of the new technology licensee forcing it to move is irrelevant . . . an incumbent still faces the same problem of being forced to relocate sensitive radio communications systems used for the

protection of life and property.” APCO at 3-4. In the PCS context, the rights of incumbents vis-a-vis unlicensed PCS and the fundamentally different licensed PCS services are the same; API sees no reason why incumbent rights should be diminished just because MSS is a different service than PCS.

19. API urges the Commission to require the MSS community to abide by the established Emerging Technologies rules. As Comsearch and others acknowledge, “this process has been found to be very effective” in the recent PCS relocation efforts. See, e.g., Comsearch at 5. There is no reason why this relocation process cannot be even more effective in the MSS context.

20. API joins with APCO and the numerous other commenters who urged the Commission to require the MSS industry to reimburse incumbents for relocation of a channel pair, even if the MSS provider will only utilize one-half of the channel pair. AAR at 9; APCO at 8; Comsearch at 5; State of California at i; UTC at 7. But for the MSS industry’s use of the 2180-2200 MHz band, incumbents would be able to utilize their assignments in the band 2130-2150 MHz.

II. CONCLUSION

21. A sunset date is an artificial and counterproductive mechanism when introduced into the process of negotiations for relocation of incumbent systems. It provides MSS licensees with incentives to forego negotiations in favor of eventually cost-free relocations. It is also counterproductive in the context of spectrum sharing because it enables a prospective MSS entrant to avoid the costs of sharing spectrum by simply waiting until after the sunset date. Finally, a sunset date penalizes incumbents who could continue to operate without causing or receiving interference.

22. After participating in TIA's JWG since its inception, API remains skeptical that sharing will be feasible in even one instance, let alone thousands of instances. API supports the ongoing work of the JWG, but admonishes those satellite interests who would have the Commission believe that the JWG will reach a particular conclusion. Ultimately, the feasibility of FS/MSS sharing is a matter to be determined on an engineering basis; API urges the Commission to continue to permit this analysis to continue, and to reject the prurient interests of commercial providers.

23. API believes that the MSS industry should be held to the same relocation standards as other emerging technology providers. MSS licensees should be required to

fully reimburse incumbents for relocation costs, including both halves of a channel pair in the 2.1 GHz band.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary in the law firm of Keller and Heckman LLP, do hereby certify that the foregoing REPLY COMMENTS has been served this 21st day of July, 1997, by mailing U.S. First-Class, postage prepaid, or by hand delivery, to the following:

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