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BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C. 20554

DEC 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 The Development of Operational,)
 Technical and Spectrum Requirements)
 For Meeting Federal, State and Local)
 Public Safety Agency Communication)
 Requirements Through the Year 2010)
)
 Establishment of Rules and Requirements)
 For Priority Access Service)

WT Docket No. 96-86

To: The Commission

**COMMENTS
 OF THE
AMERICAN PETROLEUM INSTITUTE**

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Dated: December 24, 1997

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SUMMARY

The American Petroleum Institute ("API") applauds the Commission's commitment to ensuring that our nation's public safety entities have viable communications systems for the protection of the public's health and safety. In determining how best to implement a framework for interoperability on the new public safety allocation from television channels 60-69, the Commission should recognize the vital public safety role played by the petroleum and natural gas industries, which are required by federal, state and local laws to ensure the safe production, refining and distribution of their products.

Although not traditional public safety service providers, members of the petroleum and natural gas industries often work together with governmental agencies in responding to emergency situations such as oil spills. Accordingly, API urges the Commission to conclude that non-governmental entities charged with public safety responsibilities are eligible under the plain language of the Balanced Budget Act of 1997 to use the new interoperability channels. Moreover, to ensure that such private parties are not treated like "guest entities" on these channels, they should be permitted to use their authorized frequencies during emergencies without having to obtain prior approval from any party. API also recommends that the Commission designate -- as part of the "national plan" regarding the new allocation -- at least twenty voice interoperability

channel pairs for use on a co-primary basis by non-governmental entities that perform public safety functions.

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**COMMENTS
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AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Comments in response to the Second Notice of Proposed Rule Making released in the above-captioned matter on October 24, 1997.^{1/} API strongly supports the Commission's conclusion that non-governmental entities with public safety responsibilities should be eligible to use certain of the new public safety spectrum.

^{1/} 62 Fed. Reg. 60,199 (Nov. 7, 1997).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 350 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. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the petroleum and natural gas industries.

2. Reliable two-way land mobile radio communications systems are essential tools in almost every phase of the petroleum and natural gas industries. Reliable communications must be maintained during exploration activities for the direction of personnel and equipment, control and synchronization of multiple geophysical acoustical signal sources used for oil and gas exploration, as well as for telemetering geophysical data. Drilling operations, by their very nature, involve potential hazards that can be minimized with reliable two-way mobile radio communications. After oil and gas production is established, mobile radio systems continue to play a critical role in

providing communications for the management of individual wells, as well as entire fields and pipeline gathering systems, where careful supervision must be maintained according to federal laws over the operation of valves, pumps, compressors, separation equipment, and local gathering systems. The safe and efficient operation of the extensive pipeline gathering systems and long-distance, crude, petroleum products and natural gas pipelines would not be possible without reliable two-way mobile radio communications.

3. These same types of reliable communications are absolutely necessary in petroleum refineries where the safety of personnel and adjacent populations, including the surrounding environment, demand clear channels of communication. Even in the marketing and distribution of these energy sources, mobile radio continues to play an important role in the transfer of natural gas at city gates, and the loading and delivery by rail, tank trucks and marine vessels of refined petroleum products to industrial, commercial and residential customers.

4. The petroleum and natural gas industries were pioneers in the use of two-way mobile radio communications for these industrial safety applications. While the use of private, internal systems may be supplemented with Commercial Mobile Radio Services ("CMRS"), where those services are reliably available and can meet some needs, there remains a very critical requirement for the use of privately-owned and operated two-way mobile radio systems in these industries. Because public switched systems

frequently become incapacitated during emergency conditions because of peak subscriber demand, private systems are essential in these circumstances to ensure the ongoing safe execution of energy operations where hazardous conditions could develop without reliable communications. Moreover, private systems will continue to be needed for both operational and safety communications in areas where there are inadequate or no public telecommunications facilities.

5. API members operate conventional and trunked mobile radio systems in all of the Private Land Mobile Radio Services ("PLMRS") bands. For example, API members utilize Industrial/Land Transportation ("I/LT") and/or Business Category channels in the 800 MHz and 900 MHz bands. Existing licensees seek authority, from time to time, to modify and expand these systems, and it is fully expected that new applicants in the energy industries will seek additional spectrum in the future. API members also utilize spectrum in the Private Operational-Fixed Microwave Service ("POFS") to serve a variety of vital point-to-point and point-to-multipoint telecommunications requirements, including communications between remote oil and gas exploration and production sites, for supervisory control and data acquisition ("SCADA") systems, to communicate with refineries, and to extend circuits to remote pipeline pump and compressor stations.

6. Another important use of spectrum by API members is a limited allocation for oil spill containment and cleanup operations. This allocation includes two low band, four VHF, and a single pair of UHF channels. 47 C.F.R. § 2.106, n. NG 112. Although this allocation has provided the core of emergency communications response packages for many years and has been sufficient in some instances, it is woefully inadequate for a major incident. To make matters worse, the Commission recently proposed to allocate one-half of the UHF oil spill containment channel pair to the Non-Voice, Non-Geostationary Mobile Satellite Services ("Little LEOs").^{2/}

7. In its Second Notice of Proposed Rule Making ("Notice") in this proceeding, the Commission solicits comment on service rules for the twenty-four megahertz of spectrum in the 746-806 MHz band that the Commission has proposed to allocate for public safety needs in accordance with the Balanced Budget Act of 1997 ("Budget Act"). The Commission also requests comment in response to a petition filed by the National Communications Systems relating to the establishment of wireless priority access services on commercial systems for use in meeting communications needs in emergency and disaster situations. API's Comments are directed towards the

^{2/} See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, IB Docket No. 96-220, *Notice of Proposed Rule Making* (Oct. 29, 1996); Amendment of Part 2 of the Commission's Rules to Allocate the 455-456 MHz and 459-460 MHz Bands to the Mobile-Satellite Service, ET Docket No. 97-214, *Notice of Proposed Rule Making* (Oct. 14, 1997).

development of service rules for the twenty-four megahertz allocation that best promote the public's safety and welfare. In addition to the Comments set forth below, API expressly incorporates by reference its Reply Comments filed with the Commission in ET Docket No. 97-157, the initial proceeding regarding the allocation of this spectrum. (Reallocation of Television Channels 60-69, the 746-806 MHz Band, Notice of Proposed Rule Making, FCC 97-245, released July 10, 1997). There, API urged the Commission to designate a minimum of twenty channel pairs from the new allocation for emergency, "mutual aid" use by both government entities and private parties with public safety responsibilities.

II. COMMENTS

A. **Non-Governmental Entities With Public Safety Responsibilities Should Be Eligible to Use Interoperability Channels in Life-Threatening Situations or Other Emergencies**

8. API is encouraged by the Commission's recognition in its Notice of the important public safety role that often is played by "critical infrastructure" entities such as petroleum and natural gas companies. In particular, the Commission pointed out that public safety agencies may need to communicate with workers in industries that are not primarily engaged in public safety operations during emergencies "such as accidents involving railroads or the transportation of petroleum products" and that "commercial

infrastructure providers such as utilities and railroads may need access to the interoperability channels during an emergency in which their facilities are directly involved.” (Notice at ¶¶ 86-87).

9. API believes that allowing such private entities to have access to the interoperability channels during emergency situations is entirely consistent with the provisions of the Budget Act, which defines “public safety services” for purposes of the new public safety allocation as:

“services --

- (A) the sole or principal purpose of which is to protect the safety of life, health, or property;
- (B) that are provided --
 - (i) by State or local government entities; or
 - (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
- (C) that are not made commercially available to the public by the provider.

47 U.S.C. § 337 (f) (emphasis added). Thus, to be eligible for use of the new allocation under the Budget Act, an entity need not be primarily engaged in public safety operations; rather, the services to be provided using the spectrum in question must be for the sole or principal purpose of protecting public safety. The petroleum and natural gas

industries typically work with governmental agencies during industrial accidents and require access at those times to communications facilities that will be used principally, if not solely, for public safety purposes. Accordingly, API urges the Commission to conclude that the petroleum and natural gas industries are eligible under the Budget Act to use designated public safety spectrum for emergency communications when such situations arise.^{3/}

10. The Commission also invited commenters to consider whether entities which are not public safety service providers should be eligible to use the interoperability channels and, if so, under what circumstances. (Notice at ¶ 89). In this regard, the Commission stated that it believes it would be consistent with the Budget Act and the intent of Congress “to consider broadening the eligibility for public safety channels in order to promote public safety.” (Notice at ¶ 88). As discussed above, API believes that the plain language of the statute is broad enough to encompass the emergency communications of entities that are not primarily engaged in providing traditional public safety services. API also agrees with the Commission, however, that it was certainly Congress’s intent to permit use of the new spectrum by private entities that are charged

^{3/} API is not suggesting that petroleum and natural gas entities should be eligible to use the new channels to support their day-to-day (non-emergency) operations. However, API does believe that additional private spectrum should be allocated for such purposes, and it urges the Commission to investigate possibilities for a new private wireless allocation, as directed by Congress in the Conference Report accompanying the Budget Act.

with public safety responsibilities during industrial accidents or other emergencies. Therefore, the only prerequisite for eligibility should be a showing -- endorsed by a governmental entity -- that, in light of the nature of the applicant's operations, the applicant may be involved in a "mutual aid" situation where the channels would be needed for public safety purposes.

11. As a related matter, API strongly supports the Commission's tentative conclusion that authorized non-governmental providers should not be deemed "guest entities" on the interoperability channels, but instead should be treated "as being among the public safety service providers for whom the interoperability channels are specifically intended." (Notice at ¶ 91). This means that once a private entity has established its eligibility and obtained its authorization from the Commission, it should not be required to obtain approval from any party prior to using its authorized channels in an emergency situation. Requiring such prior approval potentially would delay response time during an incident and divert needed resources from the crisis at hand, thereby jeopardizing, rather than promoting, the safety of life, health and property.

B. Plans Governing Access to the Interoperability Channels Should Be Prescribed at the National Level

12. The Commission tentatively concluded in its Notice that all providers of “public safety services” should be eligible to use all of the interoperability channels, subject to the specific “interoperability plan” that will be adopted. (Notice at ¶ 88). API supports this conclusion, but is concerned that those responsible for developing the “interoperability plan” may attempt to unduly limit access to the interoperability channels by non-governmental providers of public safety services. Accordingly, to ensure that these non-governmental providers are not treated as “guest entities” on the interoperability channels, API urges the Commission to require that certain baseline standards governing non-governmental use of such channels be included in the contemplated “national plan” regarding the new public safety allocation. The regional or state committees responsible for addressing local needs should be allowed to designate additional channels for non-governmental use, where deemed appropriate, but should not be permitted to constrain such use in a manner that conflicts with the national standard.

13. API recommends that at least twenty voice interoperability channel pairs be made available in every region to private entities charged with public safety responsibilities. Although governmental entities also would be eligible to use these channels in cooperation with private entities during “mutual aid” incidents, non-

governmental entities should have co-primary access to these channels for use in emergency situations in which governmental authorities are not involved.

14. Finally, to assist in the development of national and regional plans that reflect the needs of private providers of public safety services, as well as those of traditional public safety entities, private industry representatives should be eligible to participate in the bodies or organizations that will be responsible for implementing the new allocation. Otherwise, the Commission's vision of seamless nationwide interoperability among all public safety service providers is unlikely to become a reality.

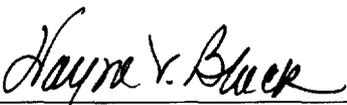
III. CONCLUSION

15. The need for interoperability between traditional public safety entities and private entities that perform public safety functions has been well documented. To alleviate this need in a manner consistent with the Budget Act, API urges the Commission to formulate eligibility standards which permit such private entities access to channels that will be allocated for interoperability in emergency situations.

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,

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