Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Establishment of Public Service Radio	**)**	**RM-905**
Pool in the Private Mobile Frequencies	**)**	
Below 800 MHz	**)**	

Joint Opposition of the Industrial Telecommunications Association, Inc., the Council of Independent Communications Suppliers, the Taxicab & Livery Communications Council, the Telephone Maintenance Frequency Advisory Committee, and USMSS, Inc.

The Industrial Telecommunications Association, Inc. (ITA), the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc. (collectively, AJoint Commenters≅), pursuant to Section 1.405 of the Commission=s rules[1] and in response to the *Public Notice* released November 23, 1998,[2] hereby submit their opposition to a Petition for Rule Making (Petition), filed by UTC, the Telecommunications Association (UTC), the Association of American Railroads (AAR), and the American Petroleum Institute (API).[3] As is demonstrated below, the Petition, which requests that the Commission establish a new radio service pool in the bands below 800

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[1] *See* 47 C.F.R. э 1.405 (AAny interested person may file a statement in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 30 days after >Public Notice= . . is given . . .≅).

[2] *Public Notice*, Office of Public Affairs Reference Operations Division Petitions for Rule Making Filed, Report No. 2306 (rel. Nov. 23, 1998).

[3] Petition for Rule Making filed by UTC, the Telecommunications Association, the Association of American Railroads, and the American Petroleum Institute, dated August 14, 1998 (Petition).

MHz, is procedurally defective and substantively untenable, and as such should be summarily dismissed or denied.

I. Statement of interest

1. ITA is a Commission-certified frequency advisory committee and coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

2. ITA enjoys the support of a membership that includes more than 5,000 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Congress
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

3. CICS is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the private land mobile radio

services.

4. TLCC is a jointly managed market council of the International Taxicab and Livery Association (ITLA) and ITA. TLCC was formed to provide a distinct voice for the unique telecommunications interests of the nation=s for-hire passenger land transportation services.

5. TELFAC is an unincorporated association representing all licensees in the Telephone Maintenance Radio Service. TELFAC is the Commission's certified frequency coordinator for the Telephone Maintenance Radio Service. TELFAC is governed by a council of licensee representatives presently composed of representatives from SBC/Pacific Bell, Rock Hill Telephone Company, Bell Atlantic-New Jersey, Inc., The United States Telephone Association, Home Telephone Company, Ameritech, and Sprint Ltd.

6. USMSS is a nationwide association of independent Motorola Service Stations. USMSS member companies provide a full range of communications equipment, infrastructure, and services to every conceivable class of business and industry across the country. In addition to providing a nationwide service support network, USMSS is committed to providing a voice in the regulatory and legislative process for its member=s constituency of private wireless licensees.

II. Introduction

7. The Commission currently has before it a petition for rule making submitted by UTC, AAR, and API (collectively, APetitioners≅) requesting that the Commission designate a new pool -- the Apublic service pool≅ -- to protect Apublic safety-related≅ services from

interference and encroachment by new industrial and commercial licensees.[4]

8. As advocates for the private wireless industry, the Joint Commenters have been participants in nearly every Commission rule making proceeding -- past and present -- concerning the private wireless industry. The Joint Commenters are concerned that the Petition, if allowed to proceed, could have a long-term negative impact on the private wireless industry. Accordingly, the Joint Commenters are compelled to oppose the Petition.

III. The Petition should be summarily dismissed as an untimely petition for reconsideration

[4] Petition at 6.

9. Although styled as a Apetition for rule making,≅ insofar as the Petition asks the Commission to designate a separate pool for Apublic service≅ entities below 800 MHz, this pleading is nothing more than a petition for reconsideration of the *Second Report and Order,*[5] and, pursuant to the Commission=s procedural rules, is untimely.[6] The Commission considered and rejected the Petitioners request for the creation of their own separate pool in the *Second Report and Order*. In that proceeding, the Petitioners argued that, because they use radio for Acritical≅ communications, their communications should be protected and they should be placed in a different pool from licensees who use the spectrum predominately for business-related communications.[7]

10. The Commission, however, declined to establish a separate pool stating that:

> With respect to those licensees that are not, strictly speaking, public safety entities but nevertheless use radio communications to serve critical safety functions, we believe that it is unnecessary to segregate channels on a nationwide basis (*e.g.*, separate pools) to protect such communications, as suggested by some commenters. Rather, this protection can be provided by the frequency coordination process in the particular service area where the channel is being used for safety-related communications.[8]

In their instant Petition, Petitioners once again request that the Commission adopt a new

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[5] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket 92-235, FCC 97-61 (rel. March 12, 1997) (*Second Report and Order*).

[6] *See* 47 C.F.R. э 1.106(f) (A petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action.).

[7] *Second Report and Order* at && 11 and 13. *See also* UTC Comments at 7-8; AAR Comments at 4 and 13; API Supplemental Comments at 2-3.

[8] *Second Report and Order* at & 17.

Apublic service pool≅ for the private land mobile radio bands below 800 MHz in order to protect the channels used to guard the nation=s Acritical infrastructure≅ from encroachment from Anon-essential≅ industrial services.[9] However, the Petition merely reiterates Petitioners= earlier requests and, as such, is simply asking the Commission to reconsider its decision in the *Second Report and Order* to only establish two pools. Thus, the Petition is nothing more than a poorly disguised petition for reconsideration.

[9] *See* Petition at 5-6.

11. Section 405 of the Communications Act of 1934, as amended, mandates that a petition for reconsideration must be filed within thirty days from the date of the public notice of the relevant action.[10] Since the *Second Report and Order* was published in the Federal Register on April 17, 1997, petitions for reconsideration were to have been filed on or before May 19, 1997. The instant Petition was filed on August 14, 1998, fifteen months after the close of the authorized filing period for filing petitions for reconsideration. Accordingly, the Petition is untimely and should be promptly dismissed in its entirety.

IV. Some of the issues raised in the Petition are already under consideration as part of the Commission=s refarming proceeding.

12. In the event the Commission decides to entertain the Petition, it should, before deciding the merits of the Petition, resolve several outstanding petitions that raise identical or very similar issues. The following are three examples of pending petitions for reconsideration that raise similar issues.[11] These outstanding petitions and the issues therein should be considered and resolved before proceeding with the instant Petition.

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[10] *See* 47 U.S.C. э 405(a); *see also* 47 C.F.R. э 1.106(f) (A petition for reconsideration must be filed within 30 days from the date of the public notice of the relevant action); 47 C.F.R. э 1.429(d) (A Apetition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action . . .≅).

[11] The Joint Commenters= use of these petitions as examples in not meant to be all inclusive. The Joint Commenters recognize that there are several additional outstanding petitions for reconsideration of the *Second Report and Order* that may also raise similar issues.

13. First, on May 19, 1997, the American Automobile Association (AAA) filed a petition for reconsideration of the *Second Report and Order* arguing that the Commission neglected to adequately consider the substantial public safety aspects of the service provided by AAA and requesting that the Commission reconsider its decision and place the Auto Emergency frequencies in the public safety pool.[12] Additionally, AAA requested that it be permitted to retain control over coordination of the Auto Emergency frequencies, much like the level of control retained by the power, railroad, and petroleum industries.[13] According to AAA, every day AAA responds to over 80,000 emergency calls equaling almost 30 million calls a year. AAA maintains that failure in its ability to dispatch a rescue vehicle to respond to these calls could have severe consequences to hundreds, or even thousands, of motorists.[14] Accordingly, AAA contends that auto emergency services have an important Apublic-safety≅ role, much like that of the power, railroad, and petroleum industries and should be afforded a similar level of protection.

14. In a letter dated November 24, 1997, AAA=s counsel advised the Wireless Telecommunications Bureau of its intent to withdraw its request to be included in the public safety pool.[15] Nevertheless, the issue of whether or not AAA should be given the same

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[12] *See* Petition for Reconsideration of the American Automobile Association at 12 (filed May 19, 1997) (AAA Petition).

[13] AAA Petition at 15-17.

[14] AAA Petition at 21.

[15] *See* Letter from Steven F. Morris, Counsel for the American Automobile Association to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, dated Nov. 27, 1997.

coordination rights within the industrial pool as the power, railroads, and petroleum industries remains pending before the FCC.

15. Second, on May 16, 1997, the International Taxicab and Livery Association filed a petition for reconsideration of the *Second Report and Order* requesting that the Commission reconsider the deletion of the rule that previously required geographic separation of taxi and non-taxi users on VHF frequencies.[16] According to the ITLA, the Commission should reinstate the geographic separation rules in order to avoid the intermixing of single channel simplex operators (non-taxi users) with paired duplex operators (taxi users).[17] In essence, the ITLA argues that, to avoid unnecessary interference, incompatible classes of users should not be required to share frequencies. Much like AAA, the ITLA also asserts that former taxi-exclusive frequencies should be given the same coordination rights as the power, railroads, and petroleum industries.[18]

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[16] ITA filed a letter supporting the ITLA=s petition for reconsideration. *See* Letter from Mark E. Crosby, President and CEO, Industrial Telecommunications Association, Inc., to Daniel Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau, dated Sept. 30, 1997.

[17] *See* Petition for Reconsideration of the International Taxicab and Livery Association at 18 and 21 (filed May 16, 1997) (ITLA Petition).

[18] ITLA Petition at 22.

The ITLA maintains that the taxicab industry plays an important role in the nation=s transportation system by transporting over 2 billion passengers per year, many of whom are elderly, infirm, or poor. The ITLA suggests that this industry is imbued with a public trust every bit as important to the traveling public as the trust imbued in the power, railroad, and petroleum industries.[19]

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[19] *Id.*

16. Finally, on May 19, 1997, API filed a petition for reconsideration of the *Second Report and Order* requesting that the Commission implement protected service contours for all existing petroleum radio service systems.[20] Specifically, API requested that the Commission prohibit the 21 dBu contour of the proposed system from overlapping the 39 dBu contour of the existing system absent concurrence from the Petroleum Frequency Coordinating Committee.[21] According to API, by establishing a protected service contour, the Commission would guarantee to ongoing viability of these potentially Acritical≅ systems.[22]

17. To date, the Commission has not released any further orders outlining its decisions regarding any of the pending petitions for reconsideration. Until such time as these pending issues are resolved, the Joint Commenters believe that the issues raised in the Petition are premature.

V. If considered on its merits, the Petition should be incorporated into the refarming proceeding

18. Due to increased demand for private land mobile spectrum and increased congestion in the existing spectrum, the Commission initiated the Arefarming proceeding≅ to promote a more efficient use of private land mobile radio (PLMR) spectrum in the bands

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[20] *See* Petition for Reconsideration of the American Petroleum Institute at 6 (filed May 19, 1997) (API Petition). ITA filed Comments strongly supporting API=s proposal as it applied to existing petroleum systems.

[21] *Id.* at 6-7.

[22] *Id.*

below 800 MHz.[23] In sum, the refarming proceeding was designed to ease congestion in the private bands, simplify the rules, and meet a portion of the future needs of the private wireless community through increased spectrum efficiency. During the course of the refarming proceeding, the Commission adopted extensive rule changes in order to facilitate better use of the existing spectrum and the deployment of new spectrum-efficient technologies. As part of that process, the Commission consolidated the existing PLMR pools into two broad service pools -- the public safety pool and the industrial/business pool.[24]

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[23] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (1995).

[24] *See Second Report and Order* at & 2.

19. The Commission was aware of the importance of its decision to consolidate the pools and the potential impact on the private wireless community. Thus, in order to collect as complete a record as possible regarding its consolidation plan, the Commission deferred its decision on the precise number of pools until the PLMR community had an opportunity to comment. The Commission received twenty-eight comments, fourteen reply comments, and two supplemental comments.[25]

[25] *Id.* at & 9.

20. The debate over the consolidation of the twenty private land mobile radio services into two pool was vetted, and resolved, within the *Second Report and Order.* Therein, the Commission rejected the suggestion that a third pool was necessary. The Commission determined that two-pools would increase licensee flexibility and spectrum efficiency in the bands below 800 MHz and Abest achieve the benefits of consolidation without compromising [the] safety of the general public.≅[26] However, the Commission also recognized some of the problems relating to protecting Asafety-related≅ communications. Accordingly, the Commission required that applicants for frequencies that were allocated to certain radio services (*i.e.*, power, petroleum, and railroads), where radio is often used for Acritical≅ public safety communications, go through the recognized frequency coordinator.[27] The Commission believed that this approach would protect these Acritical communications capabilities≅ while allowing the channels to be used by other entities in other parts of the country -- resulting in a more efficient use of the spectrum.[28] The Commission recognized that, while these industries (*i.e.*, the power, petroleum, and railroads) might need a frequency for an emergency, they would only need the frequency

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[26] *Id.* at & 15.

[27] *Id.* at & 17.

[28] *Id.* This approach appears consistent with the views of several members of Congress who, in a letter recently filed with the Commission, noted that they understood the need to maximize efficient spectrum use through shared use of the channels. *See* Letter from the Honorable Frank Pallone Jr., *et al*, to Chairman William E. Kennard, Federal Communications Commission, dated December 4, 1998 (Congressional Letter).

in a very specific area.[29] Under the combined pool structure, the frequency used to respond to the emergency would be protected through the frequency coordination process in the specific area where the emergency was located, while remaining available to other users in other parts of the country.

21. The Joint Commenters believe that the issues raised by Petitioners in their current Petition are identical to the issues already reviewed and resolved by the Commission in the *Second Report and Order*. However, in the event that the Commission determines that the issues raised in the Petition are not the same issues previously considered by the Commission and that they are ripe for resolution, the Joint Commenters suggest that these issues would be best resolved in the ongoing refarming proceeding -- not in a newly initiated rule making proceeding. As clearly demonstrated above, an extensive record relevant to the issues raised in the instant Petition was collected in the refarming proceeding. A new proceeding would require compilation of a new, but redundant, record. It would be a better use of Commission time and resources to fold this Petition into the ongoing refarming proceeding and utilize the extensive record therein to resolve the matter.

VI. <u>All</u> private wireless users are Aessential≅

[29] *Id.*

22. The Petitioners argue that the establishment of a new and distinct pool will protect public service frequencies from encroachment from Anon-essential≅ industrial services.[30] The Joint Commenters take exception to the Petitioners= most regrettable characterization or suggestion that *all* other private wireless industrial users are Anon-essential.≅ Making such a bold and untenable statement literally calls into question the validity of the Petitioners= regulatory motives. We can only hope that such an errant belief is not universally shared by all the Petitioners. Rather than spend an inordinate amount of time responding to the Petitioners= plainly self-serving statements, the Joint Commenters point out that private wireless communications are no less Aessential≅ to the protection of the safety of the life, health, and property of individuals involved in the agricultural, airline, taxicab, utility contracting, automobile emergency, overland trucking, construction, chemical, road-building, manufacturing, ranching, energy exploration, forest products, mining, land transportation, security, and telephone maintenance industries -- just to name a few. The majority of those involved in these industries rely upon their private wireless radio systems to ensure the safety of their employees and enhance their productivity and operations and contribute to the continued growth and vibrancy of the economy.[31]

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[30] Petition at 6. The Joint Commenters are puzzled by the Petitioners= assertion that the Commission must move quickly to protect the availability of spectrum for public service entities as they are facing a growing shortage of spectrum. It is the Joint Commenters= belief that potential growth in the power, railroad, and petroleum industries will be concentrated only in areas where they currently have communications infrastructure.

[31] For example, the mining and forestry industries use private wireless systems to protect the safety of their crews, who are sometimes working on subterranean levels or in very

remote areas. In order to ensure the safety of the crew, the supervisor needs to know the *exact* whereabouts of their employees at all times. They use their private wireless systems to maintain contact with one another. Interference with or failure of these systems could result in serious harm or fatalities.

23. Moreover, these industries provide the public with a plethora of goods and services that are Aessential≅ to the health, welfare, and prosperity of the American public; such as safe transportation, efficient shipment of goods, building supplies, plentiful food products, automobiles, airplanes, medicines, medical telemetry, paper products, minerals, emergency road-side service, and fuel. Apparently, the Petitioners would have the Commission and others believe that petroleum products, rail transportation, and electricity are the *only* products that support and maintain the American economy and promote the safety of life, health, and property. Following the Petitioners= rationale, one is led to believe that all other goods and services are Anon-essential.≅ However, contrary to the Petitioners= assertions and as clearly demonstrated above, to depict these vital industries and their products as Anon-essential≅ is outrageous.

24. The Joint Commenters also take umbrage at the Petitioners= assertion that Aunlike other industrial users, Public Service entities= use of radio systems is directly related to the protection of the essential public services.≅[32] Are the Petitioners implying that industries like the airlines, utility construction, or telephone maintenance are not providing a service that is Adirectly related≅ to the public=s safety? The Joint Commenters note that the airline industry uses its private internal communications system to coordinate the activities of the ground personnel who are responsible for repairs, maintenance, and passenger services on their aircraft. Disruption of or interference to these vital communication links would threaten the safety of ground personnel and waiting

[32] Petition at 6.

passengers. The Petitioners also are reminded that the telephone maintenance industry uses private wireless communications as the backbone to its wireline infrastructure. Without the telephone maintenance industry, telephone lines might not work. Emergency calls to 911 could be interrupted and go unanswered -- causing irreparable harm to the public. These are the types of services that the Petitioners so cavalierly characterized as Anon-essential.≅

25. It is the Joint Commenters firmly-held belief that the private wireless industry, an industry that encompasses hundreds of thousands of entities, utilizes private radio communications to protect either the safety of employees or the safety of the general public and that such protection is Aessential≅ -- if not absolutely vital -- to the continued provision of critical goods and services to the American public. To use Petitioners= own argument, Adisruption of any of these services would have an immediate and widespread impact on the nation=s critical infrastructure.≅[33]

VII. Petitioners= attempt to claim auction-exempt status is premature

[33] *Id.*

26. Last year, Congress passed the Balanced Act of 1997 expanding the Commission=s auction authority.[34] One of the major issues underlying the Petition is an attempt by the power, railroad, and petroleum industries to avoid the potential auction of private wireless spectrum.[35] Petitioners= attempt to tie the creation of a new pool to a ACongressional mandate≅ that the power, railroad, and petroleum industries are Aauction exempt≅ is premature. While the Joint Commenters acknowledge that the 1997 Budget Act *may* have some impact on the current licensing scheme for the private wireless industry, the Petitioners have Ajumped the gun.≅ The implementation of the 1997 Budget Act must be the subject of a rule making -- one that has not yet been initiated by the Commission and will, in all likelihood, be highly contested. At this point, any attempt to define those entities Congress intended to be Aauction exempt≅ outside the scope of a rule making proceeding would be premature.

27. It would be far more productive for these industries to work with, rather than against, the private wireless industry as a whole. Instead of attempting to carve out for themselves Aauction exempt≅ status, the Petitioners should expend their resources and energy on educating the Commission as to why exempting *all* private wireless licensees from auctions would be in keeping with the objectives of the 1997 Budget Act. Indeed, in the Conference Report accompanying the 1997 Budget Act, the Conferees stated that:

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[34] *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997) (1997 Budget Act).

[35] *See* Petition at 8 (AThese services, along with traditional public safety services, were determined to require special protection from spectrum auctions.≅).

> [The] exemption from competitive bidding authority for Apublic safety radio services≅ includes Aprivate internal radio services≅ used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or property and are not made commercially available to the public.[36]

Because the conferees made the point of including examples of *several* types of services that use private wireless radios, the Joint Commenters believe that this list is illustrative in nature, rather than all inclusive. As such, the Joint Commenters maintain that virtually all types of private wireless systems should be included on the list of auction exempt services. In any event, until initiation of the proceeding implementing the 1997 Budget Act occurs, Petitioners claim of Aauction exempt≅ status is premature and should be wholly ignored.

IX. The FCC should address the unsound frequency coordination practices that are resulting in interference to Petitioners= communications systems

[36] *See* H.R. Rep. No. 105-217 at 572 (1997).

28. The Joint Commenters believe that the other major reason behind the Petition is the potential for increase in interference to power, railroad, and petroleum licensees. Petitioners maintain that the two-pool licensing mechanism established in the *Second Report and Order* is not working because A[n]ew systems are being licensed near utility and pipeline operations, and these new systems are already causing interference to the incumbent operations.≅[37] Petitioners cite several examples of interference to power, railroad, and/or petroleum licensees that disrupted communications and prevented the licensee from fulfilling its obligation.[38]

29. The Joint Commenters agree that the power, railroad, and petroleum industries, like many other private wireless radio users, are Acritical,≅ even essential industries. Moreover, the Joint Commenters recognize that these industries have suffered an increase in interference due to inattentive frequency coordination. In other words, some of the frequency coordinators are coordinating applications without regard to the level of interference protection these industries need in order to avoid disruption of service. The Joint Commenters acknowledge and understand that the justifiable frustration of the power, railroad, and petroleum industries with some of the frequency coordinators

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[37] Petition at 6.

[38] *Id.* at 6-7; *see also* Congressional Letter at 1 (AMeanwhile, the number of cases of harmful interference with utility and pipeline operations continues to grow.≅). To the best of the Joint Commenters knowledge, these instances of interference were satisfactorily resolved.

is part of the impetus behind this push toward the creation of a separate pool. Nevertheless, the Joint Commenters believe that it is a better use of Commission time and resources to focus on and address these unsound coordination practices rather than abandoning the Commission=s often-stated goal of promoting increased flexibility for licensees by creating a new pool.

30. Towards that objective, the Joint Commenters suggest that the Commission institute **mandatory** protected service contours for the power, railroad, and petroleum industries -- much like the one proposed by API in its petition for reconsideration of the *Second Report and Order*. Specifically, the Joint Commenters recommend that the Commission prohibit the 21 dBu contour of the proposed station from interfering with the 39 dBu contour of the existing power, railroad, or petroleum system. We believe that this proposal, if adopted, would significantly reduce the potential for harmful interference. In the event that Ashort-spacing≅ is necessary, the Joint Commenters endorse mandatory concurrence from the appropriate frequency coordinator for the respective service.

31. By establishing protected service contours, the Commission will afford these important industries the level of protection necessary to ensure interference-free communications that will ultimately benefit the public interest, convenience, and necessity. This approach is also consistent with that suggested by several members of Congress. Indeed, in a recently filed letter, the members of Congress urged the Commission Ato take quick action to adopt the appropriate coordination guidelines to protect these vital

emergency communication systems from interference.≅[39] The Joint Commenters= protective contour proposal will provide the power, railroad, and petroleum industries with interference-free communications while continuing to further the Commission=s goal of fostering efficient use of the spectrum.

X. Conclusion

32. Because the Petition is an untimely petition for reconsideration of the *Second Report and Order,* it should be dismissed. The refarming proceeding has lasted for more than half a decade. The Petitioners participated fully in that proceeding by presenting several filings to the Commission during the course of the consolidation process and have presented no further enlightening revelations that would serve to benefit the public interest. Petitioners have also failed to produce even a scintilla of evidence warranting overturning the Commission=s previous wise decision to consolidate the private wireless radio services. The only rationale Petitioners offer is to denigrate other equivalent private wireless industries. This is insufficient justification for reconsideration of a Commission action. Moreover, the Joint Commenters have presented a viable alternative, the implementation of protected service contours for the power, railroad, and petroleum industries. Accordingly, the Commission should dismiss or deny the Petition and resolve any outstanding issues in the refarming proceeding.

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[39] Congressional Letter at 2.

Respectfully Submitted,

Industrial Telecommunications Association, Inc.
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201

By:_____
Mark E. Crosby
President and CEO

Council of Independent Communication Suppliers
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201-5720

By:_____
Samuel Klein, Chairman
Amateur Radio Call Sign W2INC

Taxicab and Livery Communications Council
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201-5720

By:_____
W.H. Smythe, IV, Chairman

Telephone Maintenance
Frequency Advisory Committee
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201-5720

By: _____
Michael R. Morris
Chair

USMSS, Inc.
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201-5720

By:_____
Ronald H. Runyan, Chairman

Date: December 23, 1998