

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Request for Amendment of the ) RM-9405  
Commission's Rules Regarding the )  
Establishment of Public Service Radio )  
Pool in the Private Mobile )  
Frequencies Below 800 MHz )  
 )

To: The Commission

**STATEMENT OF THE  
AMERICAN PETROLEUM INSTITUTE  
IN SUPPORT OF THE JOINT PETITION FOR RULE MAKING  
FILED BY UTC, THE TELECOMMUNICATIONS ASSOCIATION,  
THE AMERICAN PETROLEUM INSTITUTE AND  
THE ASSOCIATION OF AMERICAN RAILROADS**

The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.405(a) of the Rules and Regulation of the Federal Communications Commission ("Commission"), respectfully submits this Statement in Support of the Petition for Rule Making filed by UTC, the Telecommunications Association ("UTC"), API and the Association of American Railroads ("AAR") on August 14, 1998 (RM-9405), regarding the Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz. API reiterates its strong support for the early establishment of the Public Service Radio Pool to protect frequency allocations made for

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use in the Critical Infrastructure Industries, that include the petroleum and natural gas companies, the electric, gas and water utilities and railroads.

## I. BACKGROUND

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 oil and gas industries.

2. In joining UTC and AAR in filing the subject Petition, API is well aware that, under the two-pool mechanism adopted by the Commission for the allocation of the Private Land Mobile Radio ("PLMR") spectrum below 800 MHz, critical operational and public service communications are in jeopardy.<sup>1/</sup> Growing demands from commercial

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<sup>1/</sup> Under the two-pool mechanism established in the Second Report and Order (SR&O) in PR Docket No. 92-235, only traditional public safety agencies are eligible for frequencies

interests and non-essential business services for spectrum allocated to the Industrial/Business Pool have resulted in interference to existing communications systems of Critical Infrastructure Industries. The Petition noted some examples where interference to an important communications system was caused by the licensing of a non-public service entity near a critical infrastructure industry.<sup>2/</sup>

## II. STATEMENT IN SUPPORT

3. The melding of the PLMR frequencies below 800 MHz into two pools and the Commission's accompanying licensing rules have yielded a growing number of instances where people, property and the environment were placed in danger due to interference from commercial interests and non-essential business services newly licensed in the Industrial/Business Pool. For example, in the petroleum industry, Shell Communications, Inc. ("Shell") began to experience, sometime in July 1998, interference to its hand-held units used to coordinate the unloading of petroleum from ship to shore in Tampa, Florida. Because much of Florida's petroleum must be imported by barges, there is a significant movement of petroleum in Florida port cities. Consequently, with the increased traffic comes a greater potential for environmental- and life-threatening

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in the Public Safety Pool. All other entities must apply for use of frequencies in the Industrial/Business Pool.

<sup>2/</sup> Petition at pp. 9-11.

accidents if reliable communications are not available. The source of interference to Shell's ship-to-shore communications system was identified as an automobile towing company newly coordinated on the same channel pair as Shell. Apparently, because the towing company, located just 8 miles away, was not monitoring the channel before using the system and because of heavy use by the towing company, the channel was rendered useless for Shell. Despite attempts by the frequency coordinators and the licensees to resolve the life-threatening interference situation, a suitable solution has not been reached yet.

4. The Commission and Congress have recognized the vital role of reliable communications to the Critical Infrastructure Industries. Recognizing that entities falling into the former Railroad, Power and Petroleum Radio Services were "critical, public safety related services," the Commission provided safeguards in the SR&O to protect the Critical Infrastructure Industries.<sup>3/</sup> Congress, in the Balanced Budget Act of 1997, expanded the FCC's authority to use competitive bidding to license radio systems, but it exempted from the Commission's competitive bidding authority "public service radio services", including "private internal radio services" used by "**utilities, railroads,**

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<sup>3/</sup> For instance, the Commission provided that any entity that applies for channels allocated exclusively to the former railroad, power and petroleum services must obtain coordination from the certified frequency coordinator for the respective service.

metropolitan transit systems, **pipelines**, private ambulances and volunteer fire departments.”<sup>4/</sup>

5. The Commission’s “safeguards” to maintain the “integrity of spectrum used for such public safety purposes” are insufficient to protect the Critical Infrastructure Industries. The Critical Infrastructure Industries now must share frequencies with commercial users who have an economic incentive to load their systems to the point of saturation and may not be able to detect co-channel usage. Moreover, the Commission’s current process does not provide a solution for the Critical Infrastructure Industries’ growing need for spectrum to meet their important internal communications requirements.

6. In the Petition, the Critical Infrastructure Industries urged the Commission to establish a new radio service pool, separate from the Industrial/Business and Public Safety Pools, in the private land mobile bands below 800 MHz. This new “Public Service Pool” would facilitate protection of vital public safety-related services from interference and encroachment by new business and commercial communications systems. While not affecting eligibility for, or access to the existing Public Safety Pool, it would group together those industries whose need for reliable communications has resulted in similar

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<sup>4/</sup> P.L. 105-33, Section 3002(a)(2) amending Section 309(j)(2) of the Communications Act; H. Rpt. 105-49, *Congressional Record*, p. H6173 (June 29, 1997) (emphasis added).

concerns regarding the use and coordination of spectrum. Specifically, the Critical Infrastructure Industries proposed that eligibility for the new Public Service Pool should include power, petroleum and railroad service eligibles and any other entities that fall within the 1997 Budget Act's definition of "public safety radio service" and which are not already protected in the Public Safety Pool. The Critical Infrastructure Industries also found it essential for the Commission to maintain its frequency coordination protections by continuing to permit only the former railroad, power and petroleum services coordinator to coordinate frequencies formerly designated exclusively to its respective service.

7. The Public Service Pool proposal required the redistribution of channels currently allocated to the Industrial/Business Pool among the Industrial/Business Pool and the new Public Service Pool. The Critical Infrastructure Industries based their proposed redistribution on the current usage patterns, because the proportion of call signs best reflects the actual and anticipated needs of users on these channels and minimizes disruption to either the Public Service or Industrial/Business Pools. Accordingly, the new Public Service Pool would include (1) those frequencies used exclusively by the power, petroleum and railroad radio services and (2) a proportion of shared frequencies based on pre-refarming usage levels. The Critical Infrastructure Industries calculated that the percentage of the total channel usage by the power, petroleum and railroad licensees was: 61% low band, 8% 70 MHz band, 52% high band and 60% UHF frequencies.

8. For those Public Service eligibles who would continue to operate existing systems assigned channels that remain in the Industrial/Business Pool, the Critical Infrastructure Industries urged the Commission to implement protected service contours to protect these systems from harmful interference. The Critical Infrastructure Industries determined that because the Industrial/Business Pool would continue to be available to a wide range of users and subject to coordination by any recognized frequency coordinator, the protected service contours would be necessary to reduce the risk of interference to or encroachment upon the incumbent systems of Public Service licensees. The Critical Infrastructure Industries proposed that the FCC require the concurrence of the appropriate Public Service Radio Pool coordinator for the grant of any application that seeks authority to share any channel currently licensed to a Public Service eligible where, in the 450-470 MHz band, the applicant's 21 dBu contour would impinge upon the incumbent's 39 dBu contour; in the 150-174 MHz band, the applicant's 19 dBu contour would encroach on the incumbent's 37 dBu contour; and for the channels below 50 MHz, the applicant's 12 dBu contour would encroach on the incumbent's 30 dBu contour.

### III. CONCLUSION

9. In light of the continuing threat of interference and encroachment by new business and commercial systems, API urges the Commission to respond immediately to the Competitive Infrastructure Industries' Petition to create a new Public Service Pool in

the PLMR bands below 800 MHz. The dangers to the critical communication functions of public service entities are no longer speculative, they are real. API urges the Commission to take action now according to the proposals made by UTC, API and AAR in the Petition for Rule Making before any more lives and property are needlessly put at risk.

**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,

**AMERICAN PETROLEUM INSTITUTE**

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Dated: December 23, 1998

## CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary with the law firm of Keller and Heckman LLP, do hereby certify that a copy of the foregoing Statement of the American Petroleum Institute in Support of the Joint Petition for Rule Making Filed by Utc, the Telecommunications Association, the American Petroleum Institute and the Association of American Railroads was served this 23rd day of December, 1998 on the following persons by first class United States mail, postage prepaid:

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