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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 Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services	)	**WT Docket No. ~~99-19~~** 00-19
	)	
Telecommunications Industry Association Petition for Rulemaking	)	**RM-9418**

To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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Dated: July 20, 2000

No. of Copies rec'd _____
List A B C D E

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SUMMARY

The American Petroleum Institute ("API") appreciates this opportunity to comment on the Commission's *Notice of Proposed Rule Making* ("*NPRM*") regarding the Part 101 spectrum bands. As intensive users of these bands for the implementation of private microwave radio systems that support all aspects of their operations, the petroleum and natural gas industries have a strong interest in ensuring that adequate and reliable Private Operational Fixed Service ("POFS") spectrum remains available to meet these important needs.

With respect to the request of the United Telecom Council ("UTC") that the Commission permit POFS licensees to use their excess capacity to carry common carrier traffic, API believes that such common carrier traffic, if permitted on POFS systems, should be limited to less than half of the total amount of traffic on such a system at any given time. Otherwise, common carriers may seek to evade their common carrier obligations by licensing private systems but carrying primarily common carrier traffic.

API supports the Commission's proposal to expand conditional licensing to certain point-to-point bands below 2 GHz, provided that appropriate prior coordination procedures are adopted as well. Such conditional licensing also would be beneficial in the Multiple Address System ("MAS") bands reserved for private, internal use and in the

2.1 GHz POFS band, again with prior coordination notification to ensure that existing licensees do not incur interference as a result of such conditional licensing.

On the other hand, API does not support the Commission's proposal to allow systems with rotated linear polarization on a widespread basis in the Part 101 bands, as API believes it may result in coordination difficulties and an increased potential for interference. Instead, the Commission should limit its contemplated rule change to billboard passive reflectors and/or require licensees to employ strict vertical or horizontal polarization with respect to at least one end of any microwave path.

API agrees with the Association of American Railroads ("AAR") that final link video transmissions in the 11 GHz band should not be permitted because this spectrum is needed to accommodate the relocation of incumbent 2 GHz microwave systems. In regard to the proposals of the Telecommunications Industry Association ("TIA") designed to make the 23 GHz band more accessible to Fixed Service users, API generally supports the proposals and underlying goals, but urges the Commission to allow an adequate transition period before placing the contemplated tighter technical standards into effect.

Perhaps most significantly, API does not believe that either the Balanced Budget Act of 1997 ("BBA") or the public interest requires the Commission to auction spectrum in the Fixed Service bands above 2 GHz. Many private licensees -- including critical

infrastructure industries such as petroleum and natural gas companies, utilities and railroads -- rely on these bands for the implementation of microwave radio systems needed to conduct their operations in a safe, efficient and environmentally responsible manner; accordingly, these entities are exempt from auctions pursuant to Congress's exemption for "public safety radio services." The auctioning of this spectrum (or a significant portion thereof) would threaten the integrity and future viability of these radio systems, thereby endangering public safety as well. Instead, the Commission should ensure that adequate microwave spectrum above 2 GHz remains available for licensing by POFS entities on a site-by-site, non-auctioned basis. API also urges the Commission not to degrade the utility and reliability of this spectrum by permitting two-way mobile operations on a co-primary basis in the site-by-site licensed Fixed Service bands.

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COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute, by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby respectfully submits the following Comments regarding the Commission's *Notice of Proposed Rule Making ("NPRM")* released in the above-captioned proceeding on February 14, 2000.[1]

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[1] 65 Fed. Reg. 38333 (June 20, 2000).

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 oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, point-to-point and point-to-multipoint systems in the Private Operational-Fixed Service ("POFS") that is governed by Part 101 of the Commission's Rules and Regulations. These telecommunications facilities are used to support the search for and production of oil and natural gas. Such systems also are utilized to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, and for the processing and refining of these energy sources, as well as for their ultimate delivery to industrial, commercial and residential customers. The

facilities licensed to API's members are therefore essential to the provision of our nation's energy sources.

3. More specifically, API's members utilize POFS systems 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 used to remotely operate production and pipeline facilities, to communicate with refineries, and to extend circuits to remote pipeline pump and compressor stations. The oil and gas industries were among the pioneers in the development of private microwave, utilizing their systems to monitor and operate petroleum and natural gas pipelines.

4. The API Telecommunications Committee participated in the Commission's earliest rule making proceeding that addressed private microwave use of the spectrum; and, it has continued to be an active participant in every subsequent major proceeding affecting the POFS. API also has been involved in WT Docket No. 99-87, the Commission's general proceeding regarding the implementation of the Balanced Budget Act of 1997 ("BBA").

II. COMMENTS

5. In its *NPRM*, the Commission seeks comment on a host of different and largely unrelated issues pertaining to the spectrum governed by Part 101. API's Comments, as set forth below, address those issues that API believes to have the greatest potential impact on the POFS spectrum and/or systems employed by its member companies. Such issues include: (1) the request of the United Telecom Council ("UTC") that POFS licensees be permitted to carry common carrier traffic; (2) the Commission's inquiry regarding conditional licensing in the bands below 2 GHz; (3) the Commission's proposal to allow the use of microwave antenna systems with rotated linear polarization; (4) the proposed elimination of the prohibition on the use of the 11 GHz band for the "final link" in the transmission of program material to cable television ("CATV") systems, multipoint distribution systems ("MDS") and master antenna television ("MATV") systems; (5) the Petition for Rule Making of the Telecommunications Industry Association ("TIA") with respect to the 23 GHz band; (6) the Commission's inquiry regarding the implementation of the BBA in the Part 101 bands; and (7) the potential extension of operational flexibility to the point-to-point microwave bands.

A. The Commission Should Maintain Clear Distinctions Between Private and Common Carrier Systems

6. The Commission's existing Part 101 rules do not allow POFS licensees to use their excess capacity to carry common carrier traffic. (See 47 C.F.R. § 101.603(b)(1).) UTC has asked the Commission to eliminate this restriction, and the Commission's *NPRM* seeks comment on UTC's request. (*NPRM* at ¶ 36.)

7. While API agrees with UTC that there may be instances in which the ability to carry common carrier traffic would be beneficial to POFS licensees, API also urges the Commission to proceed with caution in the event that it decides to amend its rules toward this end. In this regard, API believes that any transmission of common carrier traffic on POFS systems that is permitted by the Commission should be subject to certain limitations and restrictions to ensure that the distinction between private operations and common carriage does not become unduly blurred. Specifically, common carrier traffic, if permitted, should be limited to less than half of the total traffic on a POFS system at any given time. In this way, the Commission would prevent common carriers from seeking to evade their common carrier obligations and responsibilities by becoming licensed with POFS status and carrying only a *de minimus* amount of private, internal traffic.

B. API Supports Conditional Licensing in All of the Point-to-Point and Multiple Address System Bands, with Appropriate Prior Coordination Procedures

8. In its *NPRM*, the Commission proposes to make the point-to-point frequency bands 952.95-956.15 MHz and 956.55-959.75 MHz available for conditional authorization pursuant to the rules presently applicable in other bands. (*NPRM* at ¶ 44.) API supports the adoption of this proposal *provided that* it is accompanied by the same types of prior coordination notification procedures and other limitations on conditional licensing that are applicable in the fixed point-to-point bands above 2 GHz. See 47 C.F.R. §§ 101.31(b)(1)(i) and 101.103(d).

9. API agrees that there are significant benefits to be gained through conditional licensing, particularly given the application processing delays that have been occurring during the ongoing transition period from the Commission's prior licensing databases and procedures to its new Universal Licensing System. However, the Commission must also seek to ensure -- through the implementation of appropriate frequency coordination procedures -- that the extension of conditional licensing to additional frequency bands does not create a risk of harmful interference to existing licensees.

10. As an additional matter, API believes that conditional licensing also should be permitted (again, with appropriate prior coordination procedures[2]) in the Multiple Address System ("MAS") bands that are available for site-by-site licensing (*i.e.*, the 928/952/956 MHz bands and a portion of the 932/941 MHz band), as well as in the 2.1 GHz POFS band. In principle, there is no reason why point-to-multipoint or 2.1 GHz band applications should be treated differently from applications for point-to-point facilities below 2 GHz. Moreover, the extension of conditional licensing to these bands would alleviate the need for the filing of requests for Special Temporary Authority ("STA") and, correspondingly, the time-consuming processing of such requests by the Commission. It is API's understanding that many MAS applicants recently have been filing STA requests due to the aforementioned application processing delays and the pent-up demand for immediate implementation of new systems that has resulted from the Commission's long-standing (and only recently lifted) licensing freeze in the MAS bands. Conditional licensing would enable such applicants to fulfill their important -- and often safety-related -- MAS requirements without further delay.

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[2] Such procedures should include a mechanism by which the frequency coordinators for the MAS bands would promptly exchange information regarding applications that they have coordinated.

C. API Has Concerns About the Commission's Proposed Changes to its Antenna Polarization Rules

11. Section 101.117 of the Commission's Rules presently states that, "Unless otherwise allowed, only linear polarization (horizontal or vertical) shall be used." In the *NPRM*, the FCC seeks comment on its proposal to remove the words "horizontal or vertical" so as to allow systems with rotated linear polarization. (*NPRM* at ¶ 47.) As justification for its proposal, the Commission states that "strict horizontal or vertical polarization is improbable for most of the billboard passive reflectors" that it authorizes. (*Id.*)

12. API is concerned that permitting rotated linear polarization on a widespread basis will create unnecessary coordination difficulties and threaten harmful interference to other licensed operations. If strict linear polarization has presented a problem with respect to billboard passive reflectors, the Commission should tailor its contemplated rule change to address only that anomaly. In the event that a more general rule change is nonetheless adopted, API recommends that licensees be required to employ strict vertical or horizontal polarization with respect to at least one end of any microwave path. In this way, the risk of interference to other licensees would be minimized.

licensees (perhaps thousands) will be required to vacate the 2.1 GHz band to make way for Mobile Satellite Service providers and other new licensees.[3] API expects that the 11 GHz band will be one of the principal bands to which displaced 2.1 GHz POFS licensees will seek to relocate their important and often safety-related microwave systems. The demand for relocation spectrum in the 11 GHz band likely will be heightened in light of the fact that the Commission recently reduced the amount of spectrum in the 18 GHz band that is available for terrestrial Fixed Services.[4] While API understands the Commission's desire to find spectrum for new and emerging technologies, it also implores the Commission not to lose sight of the importance of existing POFS systems -- particularly those that support the nation's critical infrastructure -- and, accordingly, to ensure that there will be adequate spectrum available for these vital systems. To the extent that there is also a need for additional spectrum for "final link" video transmissions, API recommends that this need be accommodated in the 12 GHz band, pursuant to the rule making proceeding that the Commission has initiated toward that end.

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[3] See In the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrums at 2 GHz for Use by the Mobile-Satellite Service, *Second Report and Order and Second Memorandum Opinion and Order*, ET Docket No. 95-18 (July 3, 2000).

[4] See In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, *Report and Order*, IB Docket No. 98-172 (June 22, 2000).

E. API Generally Supports TIA's Proposals for the 23 GHz Band, With Some Modifications and/or Limitations

16. In its Petition for Rule Making, TIA requests, among other things, that the Commission adopt various technical rule changes designed to make the 23 GHz band more accessible to Fixed Service users. Among the technical changes proposed by TIA are: (1) the delineation of a flexible channel plan that includes both narrow and wideband channels; (2) changing the frequency tolerance from 0.03% to 0.001%, so as to conform with the standard presently employed in the 18 GHz band; (3) the adoption of a spectrum efficiency requirement of 1 bps/Hz (which currently is applicable in the bands below 19.7 GHz); and (4) the designation of an additional 200 MHz of spectrum in the 23 GHz band for low power, limited coverage operations. (*NPRM* at ¶¶ 62-69.)

17. As a general matter, API agrees that the adoption of tighter frequency tolerance and efficiency standards such as those proposed by TIA ultimately would "facilitate greater exploitation" of the 23 GHz band by Fixed Service users. (See *NPRM* at ¶ 62.) API cautions the Commission, however, against making such tighter standards universally applicable in the 23 GHz band until manufacturers have had adequate time to develop and introduce equipment that is capable of meeting the new standards. One API member presently is considering the implementation of an Ethernet system [5/] using

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[5/] An Ethernet is a standard electrical interface between two or more pieces of equipment that runs at a speed of either 10 or 100 or 1000 Mb/s and is a standard format for the transmission of computer information, normally referred to as an Ethernet packet. Inside the Ethernet packet is usually an Internet Protocol data packet, which could contain any

(continued...)

available and relatively inexpensive 23 GHz equipment that would not meet the efficiency standards proposed by TIA.[6] The API member company seeks to use this system to transmit automatic well test information from programmable logic controllers in the field to a data warehouse computer in the company's office. It would make no sense to enact rules that would effectively prohibit this API member from employing the desired 23 GHz equipment, particularly when (as is API's understanding) there presently is no equipment on the market that would be in compliance with the contemplated new efficiency standards and could serve the intended purpose.

18. To address situations such as that described above, API urges the Commission to: (1) provide a cut-over or transition period of at least several years during which both new and existing licensees may continue to implement equipment that does not meet the tighter standards; and (2) indefinitely grandfather non-compliant systems that have been licensed before the end of the transition period. In addition to aiding licensees such as the API member described above, such an approach would make it easier for current users in the 18 GHz band and for users of Part 15 unlicensed equipment to seek refuge in the 23 GHz band without having to immediately purchase costly equipment or, in some cases, to wait for new, compliant equipment to become available.

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[5] (...continued)
type of information.

[6] Apparently, the equipment in question would only satisfy an efficiency standard of 0.2 bps/Hz.

In short, while the tightening of technical standards in the 23 GHz band should ultimately prove advantageous, such changes should not be placed in effect before both manufacturers and their customers are ready to implement them.

19. Finally, API agrees with TIA's proposal to create additional low power spectrum in the 23 GHz band. Many API members employ low power systems for communications in and around circumscribed areas such as petroleum refineries, and additional spectrum at 23 GHz could be useful for such purposes, particularly as the lower spectrum bands become increasingly congested and/or redesignated for other uses. At the very least, API urges the Commission to ensure that the technical standards applicable to the four existing low power channel pairs in the 23 GHz band are not tightened prematurely, but are instead subject to transitional and grandfathering rules such as those recommended above.

F. Substantial Portions of the Bands Above 2 GHz Should be Reserved for Continued Site-by-Site (non-Auctioned) Licensing by POFS Entities

20. In its *NPRM* in the this proceeding, the Commission asks whether the BBA requires it substantially to alter its licensing approach in the microwave bands above 2 GHz. (*NPRM* at ¶ 6.) In this regard, the Commission states that it will consider the record in both the BBA and Part 101 proceedings in deciding what action, if any, should

be taken. (*Id.*). The Commission then requests comment on various options for implementing the BBA in the microwave bands above 2 GHz and raises several issues regarding the interpretation of the BBA's auction exemption for "public safety radio services." (*NPRM* at ¶¶ 77-81.)

21. In its Comments and Reply Comments filed in the BBA proceeding (WT Docket No. 99-87), which API incorporates herein by reference, API explained in great detail the manner in which the operations of its member companies promote public safety both on a day-to-day basis and during emergency response situations; accordingly, API demonstrated that these operations satisfy Congress's definition of "public safety radio services," as set forth in the BBA, and are exempt from auction. Many of the critical safety-related private radio services utilized by petroleum companies are provided by POFS systems, both in the 2 GHz band and in several of the bands above 2 GHz (*e.g.*, 6 GHz, 11 GHz and 18 GHz). Like petroleum companies, other "critical infrastructure industries" such as utilities and railroads also rely heavily on POFS spectrum to ensure that their operations are conducted in a safe and efficient manner.[7] Thus, there are a substantial number of non-governmental private users in the POFS bands who -- like traditional "public safety" licensees -- cannot and should not be subject to auctions under the plain language of the BBA.

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[7] In addition to its individual Comments and Reply Comments filed in the BBA proceeding, API filed Joint Comments with the United Telecom Council ("UTC") and the Association of American Railroads ("AAR") which focused on the auction-exempt status of the "critical infrastructure industries."

22. Being exempt from auctions is of little value to API members and other like entities, however, unless the Commission also seeks to ensure that adequate spectrum remains available for licensing by these entities in the POFS bands and other bands on which they rely. While the BBA admittedly does not obligate the Commission to reserve spectrum for non-government safety-related services, API believes that such action clearly would be in the public interest. In its recent spectrum allocation decisions, the Commission often seems to focus on the apparent public benefits of implementing new and emerging commercial technologies for the provision of new telecommunications services to the public. At the same time, however, API urges the Commission not to disregard the substantial public benefits served by the private radio systems of petroleum companies and other critical infrastructure industries. Although these benefits may not be apparent and as tangible to the public as, for example, high speed internet access, they are nonetheless quite real. By contrast, the corresponding public harm would be readily apparent should a pipeline rupture or a major railroad accident occur because a private microwave system failed or, perhaps, could not be properly implemented due to inadequate spectrum.

23. The Commission recognized the importance of such private systems in its recent decision in its MAS proceeding.[8] There, the Commission reserved the

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[8] See In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, FCC 99-415 (Dec. 30, 1999) (hereinafter *MAS Report and Order*).

928/952/956 MHz MAS bands and a portion of the virtually unoccupied 932/941 MHz MAS band for "private internal services," to be licensed on a site-by-site non-auctioned basis.[9] The Commission's decision not to employ auctions in these bands rested not on the "public safety radio services" exemption (the interpretation of which was deferred to the BBA proceeding), but on the fact that site-by-site licensing in those bands would serve the public interest while avoiding instances of mutual exclusivity among license applicants and, hence, making auctions inapplicable.[10]

24. As the Commission similarly has acknowledged in the proceeding at hand, mutually exclusive applications are rare under the current site-by-site licensing scheme employed in the POFS bands. (*NPRM* at ¶ 75.) Further, like in the private MAS bands, site-by-site licensing in the POFS point-to-point bands serves the public interest and should be continued.[11] Accordingly, whether the Commission relies on the "public safety radio services" exemption or the absence of mutual exclusivity, the outcome should be clear: a substantial portion of microwave spectrum in the bands above 2 GHz should remain dedicated for site-by-site, non auction-based licensing by API members and other private users that rely heavily on this spectrum for the provision of important safety-related services.

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[9] *Id.* at ¶ 2.

[10] See *id.* at ¶¶ 11-15, 45 and 53.

[11] See discussion on the advantages of site-by-site licensing in API's Comments and Reply Comments in the BBA proceeding.

25. To the extent that the Commission also wants to auction some microwave spectrum for commercial or other non-public safety services, API recommends that separate pools or bands -- apart from the spectrum designated for continued site-by-site licensing -- be identified for such purposes. Under no circumstances, however, should any further relocations be required of incumbent Fixed Service licensees in any of the bands below 18 GHz. As the Commission notes in its *NPRM*, requiring further relocations would necessitate that it find a new "spectrum 'home'" for those incumbent licensees that are subject to relocation. (*NPRM* at ¶ 77.) The Commission also acknowledges that the relocation of 2 GHz microwave licensees into the 6 GHz and 11 GHz bands, together with the expansion of satellite and other advanced services, has "burdened" this spectrum. (*NPRM* at ¶ 75.) API further notes that the Commission recently has reduced the amount of spectrum available to Fixed Service licensees in the 18 GHz band and that many such licensees will be required to relocate their operations from one portion of the band to another.[12] Given these factors, API is extremely skeptical that a suitable "spectrum home" could be found should another sizeable Fixed Service band be rededicated for new services and/or placed on the auction block. API therefore recommends the grandfathering of all existing systems in any microwave bands that the Commission may subsequently decide to reallocate. Such an approach recently was adopted in the MAS proceeding and would be equally warranted with regard to the

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[12] See In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, *Report and Order*, IB Docket No. 98-172, FCC 00-212 (June 8, 2000).

fixed point-to-point bands.[13] In instances where band sharing between new and incumbent licensees is determined not to be feasible, alternative spectrum should be identified for the new services.

26. In summary, API wishes to emphasize the following points in response to the Commission's BBA inquiry in the *NPRM*: (1) the oil and natural gas industries operate numerous private systems in the microwave bands above 2 GHz; (2) these systems provide important "public safety radio services" and should, therefore, be deemed exempt from auctions; (3) the Commission should reserve at least a substantial portion of the various microwave bands for continued site-by-site, non-auctioned licensing by "public safety radio services" and/or other private users; and (4) incumbent microwave systems in any bands subsequently reallocated for new services should not be subject to forced relocation.

G. API Opposes the Introduction of Mobile Operations on a Co-Primary Basis in the Fixed Service Bands

27. The Commission's recently-adopted *MAS Report and Order* permits licensees to conduct point-to-point, point-to-multipoint or (upon the establishment of appropriate interference criteria) mobile operations on a co-primary basis in the MAS spectrum bands. The Commission asks, in its *NPRM*, whether such operational flexibility

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[13] See *MAS Report and Order* at ¶¶ 55-57.

III. CONCLUSION

29. API appreciates the Commission's efforts to streamline and improve its Part 101 rules, but urges the Commission to do so in a manner that recognizes the unique needs of POFS licensees such as API members. Toward this end, API recommends, for example, that the Commission preserve certain distinctions between private and common carrier systems; allow conditional licensing in all microwave bands, but only with appropriate prior coordination procedures; continue to prohibit use of the 11 GHz band for "final link" video transmissions; and allow a transition period before placing tighter technical rules into effect in the 23 GHz band. Moreover, API implores the Commission, in implementing the BBA in the microwave bands above 2 GHz, to ensure that adequate spectrum remains available on a site-by-site (non-auctioned) basis for private licensees that use their systems to provide important safety-related services. API also believes that the introduction of two-way mobile operations on a co-primary basis in the site-by-site licensed microwave bands would present an unacceptable threat of harmful interference to POFS operations.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: July 20, 2000

DOCUMENT INDEX TERMS

1. Docket Number (7) **WT 99-19**

2. Rulemaking Number (6) **RM-9418**

3. Date of filed document (mm/dd/yy) (8) **07/20/00**

4. Name of Applicant/Petitioner (last, first, mi) (25) **The American Petroleum Institute**

5. Law Firm Name (25) **Keller and Heckman**

6. Attorney/Author Name (last, first, mi) (25) **Black, Wayne V.**

7. File Number (20)

FOR FCC USE ONLY

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8. Document Type (2) ☐☐

9. FCC/DA Number (10) ☐☐☐☐☐☐☐☐☐☐

10. Release/Denied Date (mm/dd/yy) (8) ☐☐☐☐☐☐☐☐

11. Receipt/Adopted/Issued Date (mm/dd/yy) (8) ☐☐☐☐☐☐☐☐

12. Viewing Stats (1) ☐

13. Ex Parte/Late Filed (1) ☐

K:\Data\TELECOM\AP0007\nbd0507d-nbd.wpd