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Federal Communications Commission FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

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

To: The Commission

**REPLY 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 Reply Comments regarding Comments filed by other participants in response to 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. REPLY COMMENTS

1. The American Petroleum Institute (“API”), in its Comments in this proceeding, urged the Commission to recognize the unique needs of Private Operational-Fixed Service (“POFS”) licensees in considering any changes to its Part 101 rules. With respect to the Commission’s auction inquiry, API urged the Commission 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 argued, among other things, that the Commission should: (1) maintain certain distinctions between private and common carrier systems; (2) not adopt the contemplated changes to its antenna polarization rules; and (3) allow a transition period before placing any more restrictive technical rules into effect in the 23 GHz band. As discussed below, API finds ample support for its positions in the Comments of other participants in this proceeding.

A. Commenters Adamantly Oppose the Introduction of Auctions in the Microwave Bands Above 2 GHz

2. Commenters in this proceeding represent a wide range of interests, including equipment manufacturers, frequency coordinators, satellite and terrestrial commercial service providers, private licensee users and organizations, and public safety entities. Yet, despite this diversity of interests, all parties seem to agree on at least one thing: it would not be in the public interest to employ auctions in the microwave bands

above 2 GHz.^{2/} Many parties emphasize, in this regard, that the existing site-by-site licensing approach most appropriately meets the needs of microwave users and tends to avoid instances of mutually exclusive applications.^{3/} Some parties also note concern that auctions would disrupt and/or prevent the expansion of existing services, including safety-related systems.^{4/} Further, there is widespread agreement that, if the Commission were to require the relocation of incumbent licensees, there simply would not be adequate spectrum available to which such incumbent systems could be relocated.^{5/} API strongly agrees with all of the aforementioned viewpoints and urges the Commission to heed the unanimous opinion of the microwave community in deciding the future of the microwave spectrum bands.

3. In the event that the Commission nonetheless decides to implement further auctions in these bands, API agrees with those commenters who stress that adequate

^{2/} See Comments of: Alcatel USA, Inc. (“Alcatel”); API; the Association of Public-Safety Communications Officials-International, Inc. (“APCO”); the California Public-Safety Radio Association (“CPRA”); the City of Long Beach, California; Comsearch; the County of Los Angeles; the County of Riverside; the Fixed Wireless Communications Coalition (“FWCC”); the National Spectrum Managers Association (“NSMA”); the Satellite Industry Association; Stratos Offshore Services Company (“Stratos”); the United Telecom Council (“UTC”); and Winstar Communicaitons, Inc. (“Winstar”).

^{3/} See, e.g., Comments of: Alcatel; Comsearch; FWCC; NSMA; Stratos; and UTC.

^{4/} See Comments of: APCO; API; CPRA; the City of Long Beach; the County of Los Angeles; the County of Riverside; Stratos; and UTC.

^{5/} See, e.g., Comments of: API; the County of Los Angeles; the County of Riverside; Stratos; and Winstar.

spectrum should be set aside from the auction process and reserved for auction-exempt “public safety radio services.”^{6/} As UTC aptly notes, the Balanced Budget Act of 1997, “by providing that utility and pipeline communications systems would be exempt from auctions, clearly envisioned that additional licenses would be available for these services.”^{7/} API also agrees that there should be separate auction-exempt spectrum pools for governmental public safety entities and for private entities -- such as petroleum and pipeline companies, utilities and railroads -- that employ microwave systems for safety-related purposes.^{8/}

B. POFS Licensees Should Not be Permitted to Carry an Unlimited Amount of Common Carrier Traffic

4. API argued in its Comments that common carrier traffic, if permitted on POFS systems, should be limited to less than half of the total amount of traffic on any such system at a given time. API’s rationale was that common carriers could, otherwise, seek to evade their common carrier obligations and responsibilities by licensing private systems but offering primarily common carrier services or carrying primarily common carrier traffic.

^{6/} See, e.g., Comments of: APCO; the County of Los Angeles; the County of Riverside; and UTC.

^{7/} Comments of UTC at 8.

^{8/} See Comments of: APCO; the County of Los Angeles; the County of Riverside; and UTC.

5. Several commenting parties note support for the proposed lifting of the restriction against the use of private systems for common carrier traffic.^{9/} API agrees with these parties that such action by the Commission would promote spectrum efficiency by enabling private licensees to make use of their excess capacity. At the same time, however, API continues to believe that the Commission should place a limit on the amount of common carrier traffic that may be carried on a private system -- at least to the extent that the carriage of such traffic would subject the licensee to common carrier regulation.^{10/} If a POFS licensee desires to use 50% or more of its capacity for an activity that would subject it to regulation as a common carrier, it does not seem unjust or inappropriate to expect that licensee to convert its system to common carrier status (a relatively simple process under the new Part 101 rules).

^{9/} See Comments of: FWCC; Nextel Communications, Inc.; Stratos; and UTC.

^{10/} Citing a recent federal court decision, UTC states that "a private carrier service is not subject to common carrier regulation simply because it carries common carrier traffic." Comments of UTC at 9 (citing Virgin Islands Tel. Corp. V. FCC, 198 F.3d 921, 922, 925 (D.C. Cir. 1999)). While the court in Virgin Islands Tel. Corp. did affirm the Commission's decision that a company's activities in selling capacity to common carriers did not constitute common carriage, the court emphasized that the Commission's decision did not rest on a bright-line distinction between wholesale and retail activities. 198 F.3d at 928. Rather, the Commission's decision, as affirmed by the D.C. Circuit, was based on an individualized analysis of the definition of common carriage set forth in the 1996 Telecommunications Act and the two-part test established in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1976). Accordingly, it appears that the leasing of excess capacity to common carriers may or may not subject a POFS licensee to common carrier regulation, depending on the particular circumstances involved.

C. The Record Does not Support the Proposed Changes to the Commission's Rules Governing Antenna Polarization

6. API noted concern in its comments that allowing rotated linear polarization in the microwave bands on a widespread basis would create coordination difficulties and threaten harmful interference to other licensees. Comsearch, an independent engineering firm involved in spectrum management and frequency coordination, also opposes the proposed changes to the antenna polarization rules.

Specifically, Comsearch states that:

Cross-polarization of signals is a key method used by frequency coordinators to allow a greater density of microwave frequency assignments in a given area. Allowing the use of circular or elliptical polarization in the site-licensed bands that are shared among many users would destroy the cross-polarization advantage and must not be allowed.^{11/}

Like API, Comsearch argues that, rather than abandoning the requirement to use vertical or horizontal polarization, the Commission should simply allow exceptions for billboard systems.^{12/} In light of the foregoing and the absence of any support in the record for the proposed rule changes, API urges the Commission not to proceed with the contemplated amendment of its antenna polarization rules.

^{11/} Comments of Comsearch at 3.

^{12/} Comments of Comsearch at 4.

D. There Should be a Transition Period for Use of 23 GHz Band Equipment That Does Not Meet the New Standards

7. Several commenting parties express support for some or all of the Commission's proposed rule changes with respect to the 23 GHz band.^{13/} While API also indicated general support for these changes, it recommended that the Commission:

(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 efficiency standards; and (2) indefinitely grandfather non-compliant systems that have been licensed before the end of the transition period. API noted that such an approach would enable its member companies to implement cost-effective "Ethernet" systems, which could not be immediately implemented under the contemplated new efficiency standard because there presently is no equipment on the market that would comply with the new standard and be capable of serving the intended purpose.

8. In Joint Comments, Telenetics Corporation and Southwest Microwave, Inc. ("Telenetics and Southwest Microwave"), both manufacturers of electronic equipment, point out that Ethernet systems (which employ analog FM transmitters) "are highly cost-effective alternatives to T-1 circuits, and in most applications outperform

^{13/} See Comments of: Alcatel; Comsearch; Consolidated Spectrum Services; FWCC; Giganet Wireless Systems, Inc.; NSMA; and Winstar.

T-1's, but would be eliminated from the market by the cost increases that would be imposed by a 1 bps/MHz specification.”^{14/} This, in turn, would require the users of such systems “to pay the cost of much higher capacity systems than they need to meet their applications.”^{15/} Given such considerations, Telenetics and Southwest Microwave urge the Commission not to change its frequency tolerance and efficiency standards unless and until “it is clear that these requirements will not apply to analog systems or low-speed data links in support of analog systems.”^{16/} API strongly encourages the Commission to heed the recommendations of Telenetics and Southwest Microwave in adopting new rules for the 23 GHz band.

II. CONCLUSION

9. Based upon the record in this proceeding and the applicable statutes and precedent, it is clear that the Commission need not -- and, indeed, should not -- seek to implement a geographic licensing and auction approach in the microwave bands above 2 GHz. Should the Commission nevertheless determine that further auctions are warranted, the Commission must recognize the auction-exempt status of many microwave users, including petroleum and natural gas companies, and seek not only to preserve the existing systems of such users, but also to ensure that these entities continue

^{14/} Comments of Telenetics and Southwest Microwave at 5.

^{15/} *Id.*

^{16/} *Id.* at 8.

to have access to adequate new spectrum to meet their expanding needs. API also urges the Commission to: (1) limit the extent to which POFS licensees may engage in common carrier activities; (2) maintain its existing requirements with respect to antenna polarization; and (3) allow some flexibility in its 23 GHz rules, at least in the near term, so that users may continue to purchase and employ cost-effective analog systems.

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

Respectfully submitted,

**THE AMERICAN PETROLEUM
INSTITUTE**

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