

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Service Rules for the 698-746, 747-762 and 777-792 MHz Bands</b>	)	<b>WT Docket No. 06-150</b>
	)	
<b>Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band</b>	)	<b>PS Docket No. 06-229</b>
	)	
	)	

**To: The Federal Communications Commission**

**REPLY COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), by its attorneys, is pleased to submit these Reply Comments to the Federal Communications Commission (“FCC” or “Commission”) regarding the Commission’s efforts to reauction the 700 MHz band D Block.<sup>1</sup> API supports those commenters, including the National Public Safety Telecommunications Council (“NPSTC”) and the Public Safety Spectrum Trust (“PSST”), that call for the Commission to permit Critical Infrastructure Industry (“CII”) users to receive priority access to the nationwide public/private 700 MHz band network.

**I. PRELIMINARY STATEMENT**

API is a national trade association representing more than 400 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining,

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<sup>1</sup> See Service Rules for the 698-746, 747-762 WT Docket No. 06-150 and 777-792 MHz Bands, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, (2008).

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.

API's Telecommunications Committee is supported and sustained by companies that make use of a wide variety of wireline, wireless and satellite communications services on both a private and commercial basis. API member companies are authorized by the Commission to operate facilities in the Private Land Mobile Radio ("PLMR") service and Private Operational-Fixed Microwave Services ("POFS"), among other telecommunications systems. API's members utilize PLMR systems, for example, to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers. POFS is used for communications with remote oil and gas exploration and production sites for voice and data applications, communications with refineries, the extension of circuits to remote pipeline pump and compressor stations, and supervisory control and data acquisition systems ("SCADA") that remotely monitor and control oil and gas wells, and pipeline operations.

The continued operation of communications systems employed by petroleum and natural gas companies is absolutely essential to protecting lives, health and property, both in connection with the day-to-day operations of these companies, as well as during responses to emergency incidents. These systems are integral to the production and delivery of our nation's energy

resources to the public.

## **II. THE OIL AND NATURAL GAS INDUSTRY SERVES A CRITICAL SAFETY FUNCTION.**

As the Commission has recognized, CII entities such as the oil and natural gas industry perform vital safety functions.<sup>2</sup> Due to the potentially hazardous nature of oil and natural gas exploration, production and transportation, safety is a primary concern at all industry facilities. Substantial resources and communications infrastructure are employed both to prevent accidents as well as to respond quickly in the event that an incident occurs.

As many oil and natural gas facilities are located in close proximity to population centers, these safety functions benefit not only private industry but the public at large. Safety personnel employed by the oil and natural gas industry are often the first on the scene in an emergency situation. In addition, industry safety personnel coordinate with public safety officials during disaster situations as well as during routine planning and emergency preparation exercises.

For example, refineries often employ on-site fire departments and emergency response teams to provide immediate assistance in emergencies.<sup>3</sup> Highly-trained oil spill response teams regularly conduct oil spill drills coordinated with agencies such as the United States Coast Guard.<sup>4</sup> Such use of internal mechanisms combined with close cooperation with government agencies is an effective method for promoting public safety.

The essential nature of cooperation between CII and government public safety agencies has been widely recognized in connection with the creation of the nationwide public/private partnership envisioned for the 700 MHz band D block. As Cyren Call stated in 2006, “[t]he Broadband Trust must establish technical parameters that include as a core design element the

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<sup>2</sup> See 47 C.F.R. § 90.7.

<sup>3</sup> See <http://www.chevron.com/products/about/pascagoula/safeoperations> (last visited August 2, 2006).

<sup>4</sup> See <http://www.chevron.com/products/about/richmond/safety/operations.asp>.

capability of acting as an interoperability bridge that can tie together legacy local, state and federal systems, as well as those operated by members of critical infrastructure industries whose participation can be vital in emergency situations.”<sup>5</sup> The now defunct Frontline Wireless previously proposed that the D Block licensee be allowed to provide service to “providers and operators of critical infrastructure as defined in Section 2(4) of the Homeland Security Act of 2002 (incorporating the definition in 42 U.S.C. § 5195c(e)).”<sup>6</sup>

In this very proceeding, NPSTC comments that

There are common situations across the country where restoring critical infrastructure – gas, electric, water, transportation or telecommunications- is at least as important as public safety use. A lack of power and/or connectivity means that many mission critical voice systems are, or soon will be, off the air completely. There are also circumstances that, without the gas, electricity or other service being shut off, response is hindered considerably.<sup>7</sup>

The PSST echoes these sentiments in its comments,

Interoperable communications among such users during emergencies, including CII entities, is essential to the protection of life and property. The terrorist attack of 9/11, as well as natural disasters such as Hurricane Katrina, have called attention to the vulnerabilities and interdependence of this nation’s critical infrastructure and the need for rapid and effective means of communications between public safety and CII operators in times of emergency<sup>8</sup>

The International Municipal Signal Association (“IMSA”), International Association of Fire Chiefs, Inc. (“IAFC”), Congressional Fire Services Institute (“CFSI”), and Forestry Conservation Communications Association (“FCCA”) specifically reference the importance of coordinating emergency response efforts with oil and natural gas industry entities,

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<sup>5</sup> See e.g., Cyren Call Communications Corp., Petition for Rulemaking at vi (April 27, 2006)

<sup>6</sup> See Letter from John Blevins, counsel to Frontline Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229 (Mar. 26, 2007). 42 U.S.C. § 5195c(e) defines critical infrastructure as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.”

<sup>7</sup> NPSTC Comments at 17-18.

<sup>8</sup> PSST Comments at 21.

Operators of refineries, chemical facilities and pipelines are subject to countless emergency preparedness, release response and notification obligations under Federal and state laws. In incidents involving these facilities, first responders must acquire essential information and data about the facilities and coordinate and communicate with operators of these facilities in order to respond effectively in the case of these incidents. Shared access to facility blueprints, process control diagrams and pipeline maps are essential to effective, safe emergency response and are among the fundamental drivers for wireless broadband requirements among Public Safety agencies.<sup>9</sup>

API supports the calls from these organizations for the Commission to permit CII access to the public/private public safety 700 MHz band network.

### **III. THE FCC SHOULD PERMIT THE PSST TO PERMIT PRIORITY CII ACCESS TO THE 700 MHZ BAND PUBLIC/PRIVATE NETWORK**

API is on the record in this proceeding as stating that the Commission should permit access to the 700 MHz band public safety network for those CII entities that meet the eligibility requirements of 47 C.F.R. § 90.523(b).<sup>10</sup> Under Section 90.523(b) of the Commission's rules, a Non-Governmental Organization ("NGO") is eligible to hold authorization to operate in the public safety portion of the 700 MHz band on the condition that it

(1) [h]as the ongoing support (to operate such a system) of a state or local governmental entity whose mission is the oversight of or provision of services, the sole or principal purpose of which is to protect the safety of life, health, or property;

(2) [o]perates such authorized system solely for transmission of communication essential to providing services the sole or principal purpose of which is to protect the safety of life, health, or property; and

(3) [a]ll applications submitted by NGOs must be accompanied by a new, written certification of support (for the NGO applicant to operate the applied-for system) by the state or local governmental entity [supporting the operations].<sup>11</sup>

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<sup>9</sup> See Comments of IMSA, IAFC, CFSI, and FCCA at 10.

<sup>10</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *API Comments*, WT Docket No. 06-150 (2006).

<sup>11</sup> 47 C.F.R. § 90.523(b).

This rule implements Section 337(f)(1) of the Communications Act of 1934, as amended, which states that NGO activities are included within the definition of “public safety services” if such operations are “authorized by a governmental entity whose primary mission is the provision of such services.”<sup>12</sup>

API previously called for the Commission to recognize that, pursuant to Section 337 of the Act and of Section 90.523 of the Commission’s rules, NGOs satisfying the eligibility requirements of Section 90.523(b) of the Commission’s rules are eligible to receive access as providers of “public safety services” from the National Public Safety Licensee.<sup>13</sup> API believes that failure to do so would defeat the spirit, if not the letter, of Section 90.523 of the FCC’s rules and Section 337 of the Act and severely hinder the ability of governmental organizations to work with the private sector to ensure the public safety. In addition, to the extent that one of the overarching goals of this proceeding is interoperability, that goal would be utterly and completely defeated by any plan which provided spectrum for governmental organizations, but prohibited CII entities acting in support of state and local public safety operations from doing the same.<sup>14</sup>

NPSTC espouses a similar interpretation of Section 90.523 of the Commission’s rules and “recommends that the Commission parallel the core concept of its rules contained in section

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<sup>12</sup> See 47 U.S.C. § 337(f)(1).

<sup>13</sup> API incorporates those comments herein.

<sup>14</sup> API also called for the Commission to mandate that NGO use under Section 90.523 be allowed on a non-discriminatory basis under the same rates, terms, and conditions, including priority levels, made available to public safety entities. It is almost too obvious to state that unless CII entities receive priority on the network during emergencies, CII entities will make very little if any use of the 700 MHz band, defeating entirely the public interest interoperability benefits.

90.523. [...] To protect the capacity requirements of local and state agencies from being depleted, access would be conditioned on continuing support from the local agency.”<sup>15</sup>

The PSST proposes a slightly broader concept stating that “there are compelling public safety reasons to include CII entities in the pool of eligible priority users of the [nationwide network]. [...] Thus, the rules should clarify that so long as a CII entity uses the spectrum for a public safety function, that use can be given priority access by the PSST.”<sup>16</sup> API believes that the PSST’s proposal is consistent with Section 337 of the Act and the Commission should amend its rules to clarify that the PSST is directly authorized to permit an NGO to receive priority access on the 700 MHz band network.

The core principle of Section 337 is that NGOs seeking access to 700 MHz band public safety spectrum have the ongoing support of a state or local governmental entity whose mission is the oversight of or provision of services, the sole or principal purpose of which is to protect the safety of life, health, or property. API suggests that the make-up of the board of directors of the PSST is sufficient such that the Commission could properly consider the PSST an entity empowered to authorize NGO access to the 700 MHz band network under Section 337 of the Act.<sup>17</sup>

Recognizing such authority in the PSST also serves to promote the feasibility of implementing NGO 700 MHz band operations across a large geographic area that does not necessarily comport to the jurisdiction of a single state or local government. For example, while the operator of a several thousand mile long interstate pipeline could conceivably obtain

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<sup>15</sup> NPSTC Comments at 18.

<sup>16</sup> PSST Comments at 20-21.

<sup>17</sup> The PSST board of directors is comprised of several organizations whose membership consists of state and local public safety organizations including AASHTO, APCO, IACP, IAFC, IMSA, NASEMSO, NASNA, NENA, and the NFOP.

authority from each state or local government its right-of-way crosses, in practicality the logistics of doing so are an insurmountable obstacle. Obtaining authority from a centralized source such as the PSST would significantly aid such efforts and promote truly nationwide public safety and interoperability.

#### **IV. CONCLUSION**

For the forgoing reasons, API respectfully requests that the Commission consider the public safety role played by Critical Infrastructure entities and permit such entities to receive priority access to the nationwide public/private 700 MHz band network..

Respectfully submitted,

**THE AMERICAN PETROLEUM  
INSTITUTE**

By: /s/ Jack Richards  
Jack Richards  
Gregory E. Kunkle  
Keller and Heckman LLP  
1001 G Street  
Suite 500 West  
Washington, D.C. 20001  
(202) 434-4100

Its Attorneys

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