

BEFORE THE

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Federal Communications Commission

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WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Redesignation of the 17.7-19.7 GHz Frequency) **IB Docket No. 98-172**
 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)

To: The Commission

**REPLY
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), respectfully submits this Reply to the Opposition of Teledesic LLC ("Teledesic") to the Petition for Clarification and Reconsideration ("Petition") of Winstar Communications, Inc. ("Winstar") concerning various rule amendments covered by the *Report and Order* ("Order") adopted by the Commission in the above-captioned matter on June 8, 2000.¹ Specifically, API strongly supports Winstar's request that the Commission clarify its rules to confirm that license assignments and/or transfers of

¹ 65 Fed. Reg. 54,155 (Sept. 7, 2000).

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control involving 18 GHz Fixed Service incumbents do not result in a loss of primary status.

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 petroleum and natural gas industries.

2. At least nineteen petroleum and natural gas companies hold FCC authority in the Fixed Microwave Services ("FS") for the operation of links in the 18 GHz band. Many of these licensees operate multiple links in the 18 GHz band. Some of these links serve as spurs off of long-haul microwave systems that employ frequency assignments from other bands, including 1850-1990 MHz ("1.8 GHz"), 2130-2150/2180-2200 MHz ("2.1 GHz"), and 5925-6875 MHz ("6 GHz"). Thus, a pipeline licensee that utilizes a 2 GHz or 6 GHz long-haul system may employ 18 GHz links from its backbone to a field office, refinery, central production facility, or city gate. As a result, these 18 GHz spurs

frequently form an integral part of the overall production, refining and transportation process. During emergency conditions, these communications facilities play a vital role for alerting public safety officials, coordinating response activities, and minimizing the impact of an incident upon workers and the general public.

3. The communications systems operated by API members are capable of monitoring pipeline pressure levels, temperatures, flow rates, volume and alarm sensors. These systems are designed to detect abnormalities, and respond remotely by adjusting valve settings and other parameters thereby maintaining safe operating conditions. These automatic safety features are employed throughout tens of thousands of miles of pipeline in this nation. Information from these Supervisory Control and Data Acquisition (“SCADA”) systems, common throughout the industry, is transmitted over a variety of communications circuits, including 18 GHz microwave links. Without this reliable information, the likelihood and/or impact of pipeline ruptures, with their attendant health and environmental consequences, would be increased dramatically.

4. In light of the importance of 18 GHz band operations to many petroleum and natural gas companies, API has been an active participant in this proceeding. In particular, API has sought to ensure that the Commission’s new rules for the 18 GHz band achieve a fair balance between the interests of FS and satellite licensees by, among other things, providing for adequate reimbursement to any FS incumbents that are

required to relocate their systems to alternative spectrum. API is submitting this Reply to address the limited but very important issue of how the Commission should treat 18 GHz FS incumbent licenses that are subject to an assignment or transfer of control as part of a routine merger, acquisition or other business transaction.

II. REPLY

5. In its Petition, Winstar correctly noted that, under the clear language of the *Order*, assignments and transfers of control involving 18 GHz FS incumbent licenses are not to result in a loss of primary status (unless such a transaction would increase interference to satellite earth stations or result in a facility that would be more costly to relocate). (Winstar Petition at ¶ 9). As Winstar also pointed out, however, a literal reading of the Commission's Part 101 and Part 1 rules could lead to the mistaken conclusion that such transactions will be approved only with a secondary status condition. (Winstar Petition at ¶¶ 9-10). For the reasons discussed by Winstar in its Petition, as well as those addressed below, API joins Winstar in urging the Commission to clarify its rules to conform to the *Order* and, thereby, ensure that 18 GHz FS incumbents will not risk losing their primary status and associated relocation rights upon engaging in a merger, acquisition or other normal business transaction.

6. As previously discussed herein, API member companies rely heavily on private microwave facilities -- including many in the 18 GHz band -- to provide important

safety-related functions such as the monitoring and control of pipelines and enhancing the ability of member companies to respond to emergency situations. Further, like other areas of the economy, the petroleum and natural gas industries presently have been experiencing a high level of mergers, acquisitions and other transactions in the normal course of business that may result in license assignments or transfers of control. If such transactions were to lead to a loss of the right to obtain relocation compensation for incumbent 18 GHz licenses, it could impair the marketability and/or market value of petroleum and natural gas companies and other 18 GHz FS incumbents and, more importantly, impede the ability of these companies to continue maintaining the microwave facilities needed to conduct their operations in a safe and efficient manner. Accordingly, the public interest will be served by the Commission's clarification of its rules to clearly reflect the approach adopted in the *Order*.

7. Teledesic argues in its Opposition that Winstar's "proposal" with respect to license assignments and transfers of control "would tend to increase terrestrial use of bands designated for satellite use, and would aggravate the costs of relocation rather than mitigate them." (Teledesic Opposition at 6). In this regard, Teledesic claims that Winstar's "proposal" would provide an incentive for an 18 GHz incumbent that no longer needs its license to sell that license "to a new FS operator who would not otherwise be able to get a co-primary authorization in the band." (Teledesic Opposition at 7).

8. Teledesic's position is entirely without merit and evinces an obvious misunderstanding of the Commission's *Order*, of the nature of many incumbent 18 GHz FS operations, and of the basis of many -- if not most -- requests for consent to assignment or transfer of control of 18 GHz FS licenses. First, API wishes to emphasize that Teledesic has repeatedly mischaracterized Winstar's position as a mere "proposal," rather than acknowledging that it is, in fact, simply a restatement of the Commission's own conclusions in its *Order*.^{2/} Winstar's position also reflects (to the best of API's knowledge) the Commission's long-standing policy with respect to license assignments and transfers of control in other bands in which relocation and grandfather rights have accrued (*e.g.*, the 1850-1990 MHz and 2.1 GHz FS bands).

9. Second, Teledesic is flatly incorrect that allowing the assignees and transferees of 18 GHz grandfathered FS licenses to retain primary status and relocation rights would increase terrestrial use of these licenses or otherwise "aggravate" potential relocation costs. As Teledesic no doubt is aware, such assignees and transferees would not be permitted to make any major modifications to the terms of their licenses or other changes that would negatively impact satellite licensees, but would instead be limited to the same scope of operations for which their predecessors in interest were authorized. Moreover, API believes that the overwhelming majority of requests for consent to assignment or transfer of control of 18 GHz grandfathered licenses will involve either

^{2/} See *Order* at ¶ 75.

pro forma transactions (such as internal reorganizations)³ or instances where the ownership of the licenses is changing as a result of the sale of the licensee's entire business. In the case of a private licensee such as an API member company, for example, the company's 18 GHz license(s) would not be the main object of the purchase, but would instead be one of many assets being transferred in the course of an acquisition of a going concern. Under such circumstances, there is no reason to diminish the value and viability of the 18 GHz license(s) by applying a secondary status condition. In the rare event that a particular application for assignment or transfer of control of a grandfathered 18 GHz license appears to involve trafficking in the license itself and/or the sale of a license that no longer is used or needed by the initial licensee, it would be well within the Commission's discretion to condition its grant of the application on the acceptance of secondary status. The general presumption, however, should be in favor of granting primary status unless circumstances are determined by the Commission to warrant otherwise.

10. Finally, API notes that, as a procedural matter, Teledesic has missed the opportunity to request reconsideration of the Commission's decision in its *Order to grant applications for assignment or transfer of control involving incumbent FS 18 GHz licenses on a primary basis (unless the Commission determines either that interference to*

³ While commercial licensees no longer are required to obtain the Commission's prior consent to an assignment or transfer of control with respect to *pro forma* transactions, the Commission's forbearance authority in this regard does not extend to licensees in the private radio services (such as API member companies).

satellite systems or relocation costs would be increased).[±] Winstar, now joined by API, merely is asking the Commission to clarify its rules so as to reflect the clear language and intent of the *Order*. To the extent that these rules presently could be construed in a contrary manner, it is the inadvertent result of general rule changes made during the Commission's proceeding to facilitate implementation of its Universal Licensing System (WT Docket No. 98-20). (See Winstar Petition at ¶¶ 9-12). Had Teledesic desired that the Commission reconsider its decision with regard to the assignment or transfer of control of grandfathered 18 GHz licenses, it should have made its desire known in a timely filed request for reconsideration of that aspect of the *Order*.

III. CONCLUSION

11. API strongly urges the Commission to clarify its rules regarding the assignment or transfer of control of 18 GHz grandfathered licenses in the manner requested by Winstar. Such action would not entail the conferral upon 18 GHz FS incumbents of any new or additional rights or benefits; rather, it simply would preserve and confirm the ability of a successor licensee to use its 18 GHz FS facilities in the same manner and for the same purposes as its predecessor. In the typical situation involving a change in ownership of an 18 GHz FS license, allowing the licensee to retain primary status would in no way increase potential relocation costs to satellite licensees. Thus, any change in this policy would serve only to provide satellite licensees with a substantial

[±] *Order* at ¶ 75.

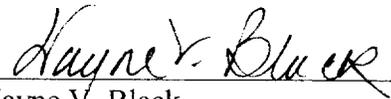
windfall, while potentially impeding the ability of 18 GHz band incumbents to engage in normal business transactions and threatening the viability of safety-related incumbent 18 GHz systems such as those operated by many API member companies.

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

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CERTIFICATE OF SERVICE

I, Krista Thomas, a secretary with the law firm of Keller and Heckman LLP, do hereby certify that copies of the foregoing Reply of the American Petroleum Institute was served on the parties listed below by first-class U.S. mail, postage prepaid, on this 22nd day of November, 2000.

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