

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)	
)	
Flexibility for Delivery of)	IB Docket No. 01-185
Communications by Mobile)	
Satellite Service Providers)	
in the 2 GHz Band, the L-Band, and)	
the 1.6/2.4 GHz Band)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate)	
Spectrum at 2 GHz for Use by the)	
Mobile Satellite Services)	

To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

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SUMMARY

Many member companies of the American Petroleum Institute (“API”) rely on Fixed Service (“FS”) systems operating in the 2.1 GHz spectrum band to provide critical monitoring and control functions in support of their petroleum and natural gas operations. As a result, API repeatedly has sought to ensure that the reallocation of this spectrum band for Mobile Satellite Services (“MSS”) and other new services will not result in harmful interference to or otherwise disrupt incumbent FS licensee operations and that there is a fair process for relocating incumbents to alternative spectrum.

With respect to the request of satellite entities for authorization to provide terrestrial service, API agrees with the Commission that such service should be permitted (if at all) only on an ancillary basis to MSS operations. API also supports the Commission’s conclusion that TIA’s Technical Service Bulletin (“TSB”) 10-F, rather than TSB-86, should be used to assess potential harmful interference to FS operations by MSS terrestrial facilities.

Perhaps most importantly, API urges the Commission not to further dilute the relocation policies and procedures presently in place for the 2.1 GHz band. Such policies and procedures properly include a two-year period for mandatory negotiations and a requirement that the first new licensee to seek relocation of an incumbent relocate both links in a paired FS frequency assignment. Various protections previously provided to incumbents already have been whittled away in an effort to smooth the way for the deployment of new systems. Any further policy shifts in favor of new licensees simply cannot be justified.

Finally, API asks the Commission to proceed with the resolution of issues presently pending on reconsideration, such as whether incumbents should be able to obtain compensation for self-relocation and whether incumbent license assignments and transfers of control should be granted with continued primary status. In the absence of prompt resolution, incumbents will remain in a state of limbo that hampers their ability to meet future operational needs and engage in normal corporate transactions.

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The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM")¹ in the above-captioned proceedings.² The *NPRM* considers whether Mobile Satellite Service ("MSS") licensees

¹ 66 Fed. Reg. 47621 (Sept. 13, 2001).

² By Order released on October 4, 2001 (DA 01-2314), the Commission extended the

should be permitted to incorporate a wireless terrestrial component into their satellite networks on an ancillary basis.

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 the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. 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 Fixed Microwave Service ("FS") that is governed by Part 101 of the Commission's Rules and Regulations. These telecommunications facilities -- which include many systems in the 2.1 GHz band -- are used to support the search for and production of petroleum 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

comment deadline in this matter from October 11, 2001 to October 19, 2001.

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 private FS 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, 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 FS. Accordingly, API has been actively involved in each phase of the Commission's ongoing proceeding in ET Docket No. 95-18, which entails the reallocation of spectrum in the 2.1 GHz band for the MSS and the adoption of relocation and reimbursement provisions for those FS licensees and other incumbents required to vacate their assignments.

II. COMMENTS

5. The Commission seeks comment in its *NPRM* on whether to permit MSS licensees to offer ancillary terrestrial services in order to overcome apparent technical

difficulties inherent to MSS operations. API does not oppose the authorization of ancillary terrestrial operations on MSS systems, provided that certain prerequisites (described below) are met. These Comments also respond to the Commission's inquiry regarding the potential impact of the contemplated rule changes on existing rules concerning the relocation of FS licensees in the 2165-2200 MHz band. (See *NPRM* at ¶¶ 75-76). As further discussed below, API supports the Commission's proposals regarding the interference criteria to be used with respect to terrestrial operations by MSS providers. In addition, API urges the Commission not to further erode the relocation and reimbursement rights of those FS licensees that will be forced to vacate their spectrum assignments in the 2.1 GHz band.

A. Any New Terrestrial Operations Permitted on 2.1 GHz "MSS Spectrum" Should be Authorized Strictly on an Ancillary Basis

6. As the Commission notes in its *NPRM*, certain MSS providers have claimed that adding a terrestrial component to their networks would bolster the commercial viability of MSS systems by enabling operators to extend service to indoor and urban areas that otherwise would remain unserved by a satellite-only MSS network. (See *NPRM* at ¶¶ 23-25). In response to these claims, the Commission seeks comment on whether to permit such terrestrial service on an ancillary basis to the "core" MSS services being provided. With respect to the 2.1 GHz band, the Commission states that, to ensure that terrestrial operations are ancillary to satellite service, it would require MSS operators to meet certain coverage and service requirements before authorizing an MSS operator to provide terrestrial service. (*NPRM* at ¶ 32 and 41-48).

7. API concurs with the Commission's suggestion that, to the extent that MSS providers are permitted to offer terrestrial services in the 2.1 GHz band, such services should be authorized only on an ancillary basis. As the Commission posits, permitting the provision of new commercial terrestrial services separate from pre-existing MSS authorizations (and on spectrum not assigned by auction) would run afoul of the Commission's obligation to employ competitive bidding pursuant to Section 309(j) of the Communications Act. (See *NPRM* at ¶ 39). Accordingly, API agrees with the Commission's proposal that a certain level of MSS coverage be established before MSS licensees are authorized to provide terrestrial service. API also believes that any MSS licensee authorized to provide terrestrial services should be required -- on a permanent basis and without any "sunset" -- to demonstrate periodically that it continues to meet the prerequisite level of MSS coverage. Otherwise, MSS providers could phase out all satellite service and simply become terrestrial licensees, thereby making an end run around Section 309(j) and obtaining an unfair advantage over terrestrial service providers that obtained their authorizations through competitive bidding. As an additional safeguard against abuse, API proposes that MSS licensees be required to support their requests to provide terrestrial service with technical evidence that they are unable to provide MSS service to particular locations that they seek to serve.

8. As an alternative to authorizing only MSS operators to use MSS spectrum for ancillary terrestrial operations, the Commission seeks comment on whether some MSS spectrum should be made available for use by any entity to provide terrestrial

services either in conjunction with MSS systems or as an alternative mobile service. Under this approach, portions of the MSS spectrum would be segregated from the MSS operations, made available for terrestrial use, and possibly assigned through competitive bidding. (*NPRM* at ¶ 37). In regard to this proposal, API notes that the Commission already has proposed, in a separate but related proceeding, to reallocate a portion of the 2.1 GHz MSS band for advanced wireless services, with licenses to be assigned via auction.³ API does not perceive any need for two separate reallocations of MSS spectrum and, correspondingly, two separate auctions for new terrestrial services in the 2.1 GHz band. Thus, API believes that any new allocation for “stand alone” terrestrial services should be pursued within the context of ET Docket No. 00-258.

B. The TSB-86 Criteria are Not Appropriate in the Terrestrial Context

9. In its *NPRM*, the Commission seeks comment on whether the Telecommunications Industry Association’s Technical Service Bulletin 86 (“TSB-86”) criteria -- which were developed specifically for analyzing MSS to FS interference -- also would be appropriate for assessing harmful interference by MSS terrestrial facilities to FS operations. In the event that these criteria would not be sufficient, the Commission proposes to adopt for these purposes the criteria that have been used for assessing interference by Personal Communications Services (“PCS”) licensees to FS licensees in

³ See In the Matter of Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (“Further Notice”), ET Docket No. 00-258, 66 Fed. Reg. 47618 (Sept, 13, 2001).

the 1850-1990 MHz band (*i.e.*, TIA's TSB10-F). Under this approach, if either TSB-86 or TSB10-F indicated interference to the FS licensee, the MSS licensee would be required to relocate the incumbent. (*NPRM* at ¶¶ 75-76).

10. API agrees with the Commission that TSB-86 would not be the appropriate criteria for assessing interference by MSS terrestrial facilities to FS licensees in the 2.1 GHz band because TSB-86 assesses only mobile satellite to FS interference. API also agrees that TSB-10F should instead be used for these purposes and that relocation and reimbursement should be required if either test indicates a likelihood of interference to the FS licensee. In light of the important safety functions served by private FS systems employed by critical infrastructure industry companies such as API members, API also emphasizes that -- contrary to prior suggestions by MSS interests -- the obligation to relocate an incumbent licensee should be triggered by a demonstration of potential interference under the applicable technical standard, rather than by a showing that any actual interference has occurred.

C. The Commission Should Reaffirm that New Licensees in the 2.1 GHz Band Must Relocate Both Links in a Paired FS Frequency Assignment

11. The 2.1 GHz band FS systems operated by API member companies and other private licensees typically consist of paired frequency assignments, with one transmitter operating in the 2130-2150 MHz band and the other operating in the 2180-2200 MHz band. As the Commission is aware, the former band segment has been redesignated for auction pursuant to the Balanced Budget Act of 1997 (possibly to be

used for advanced wireless systems), while the latter segment has been reallocated for MSS downlink spectrum and, pursuant to the Commission's *Further Notice* in ET Docket No. 00-258, may subsequently be further reallocated, in part, for advanced wireless systems. Moreover, given the Commission's proposals in the *NPRM* to permit ancillary terrestrial operations by MSS licensees, it is quite conceivable that 2.1 GHz band FS licensees ultimately will be subject to potential relocation by advanced wireless services, MSS satellite operations *and* MSS terrestrial operations. With the possible deployment of such a variety of new services in the 2.1 GHz band, it is particularly important for the Commission to ensure that FS relocations do not occur in a piecemeal manner that risks disruption to the important safety-related operations of many FS licensees.

12. In adopting relocation rules with respect to the 2.1 GHz band, the Commission properly observed that it typically is necessary to relocate both links of a two-way FS microwave system.⁴ Thus, to facilitate relocation of paired links, the Commission concluded that when a new MSS or other licensee relocates a pair of FS links in these bands, a subsequent new licensee who benefits from a prior relocation will reimburse the initial new entrant who paid for relocation of paired channels.⁵ API fully supports this policy and urges the Commission to confirm its applicability with respect to any MSS licensees seeking to deploy terrestrial services.

⁴ See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service, *Second Report and Order and Order and Second Memorandum Opinion and Order*, ET Docket No. 95-18, 15 FCC Rcd 12315, at ¶ 95 (July 3, 2000).

⁵ *Id.* at ¶ 97.

13. The need to relocate both links of a two-way FS microwave system has been borne out time and again by the experience of FS relocations from the 1850-1990 MHz band to make way for PCS licensees, and such a need can be expected to be present in the 2.1 GHz band as well. FS spectrum in the 6 GHz band typically has been selected as the most appropriate available spectrum for the relocation of incumbent FS systems in the lower and upper 2 GHz bands. It is highly impractical, however, to use, for example, a 2.1 GHz band transmit frequency paired with a 6 GHz band receive frequency, as those frequencies are so far removed from one another that separate antennas and transmission lines would be required. Transmitters operating at 6 GHz cannot use 2.1 GHz feedhorns and coaxial cable, and 2.1 GHz transmitters cannot use 6 GHz feedhorns and waveguide. Under these circumstances, the only sensible and cost-effective approach is to relocate both links of an implicated microwave path at one time. Accordingly, the first new licensee to require relocation of a particular FS incumbent system in the 2.1 GHz band -- regardless of the nature of the services that the new licensee is seeking to deploy -- should be expected to bear initial responsibility for relocating both halves of any paired frequency assignments that are involved.

D. Each FS Licensee that Must Relocate Should be Afforded a Full Two-Year Period for Mandatory Negotiations

14. The existing rules for the relocation of incumbent non-public safety FS licensees from the 2.1 GHz band establish a two-year period for mandatory negotiations between the incumbent and the new licensee. (See 47 C.F.R. § 101.69(d)(1)). The Commission inquires in its *NPRM* whether the negotiation period should be extended in

the event that the Commission adopts its proposals regarding MSS terrestrial operations. (*NPRM* at ¶ 76).

15. API does not believe that there is a need to extend the negotiation period, *provided that* the Commission clarifies its rules to ensure that each incumbent that will be required to relocate -- whether due to MSS or terrestrial interference -- receives a *bona fide* two-year period during which to negotiate a relocation agreement. Under existing relocation rules, the mandatory negotiation period will begin when the MSS licensee informs the FS licensee, in writing, of its desire to negotiate. (47 C.F.R. § 101.73(d)). It is unclear from this rule whether the Commission contemplates that all entities would be subject to the same two-year period, triggered by the first MSS licensee to contact an incumbent, or whether staggered negotiation periods could occur based upon when each MSS licensee notifies each incumbent.

16. To protect incumbent interests, API urges the Commission to establish “rolling” negotiations whereby each incumbent is entitled to its own two-year negotiation period triggered by the commencement of actual negotiations. If MSS licensees are permitted to integrate terrestrial operations into their networks following the establishment of a certain level of MSS service, it is likely that the need for some FS relocations will be triggered by the initial (and subsequent) launching of satellite service, while the need for other FS relocations may not be triggered until months, or perhaps years, later when MSS providers are authorized and prepared to offer terrestrial service. Under these circumstances, a single, fixed two-year negotiation period likely would

elapse and “involuntary” relocations would be triggered before many incumbents -- particularly those being displaced by MSS terrestrial operations -- even are approached by an MSS provider. Such a result not only would be unfair to incumbents, but also would likely require the Commission’s involvement, in many instances, in disputes over whether incumbents have been provided with “comparable facilities” under the Commission’s rules for involuntary relocations. The establishment of rolling negotiations, by contrast, would provide each incumbent with a meaningful period of time during which to negotiate for the relocation of its critical FS facilities and would be unlikely to necessitate the Commission’s involvement except in unusual cases.⁶ API also notes that such rolling negotiations have been employed successfully with respect to the relocation of FS incumbents by PCS licensees. (See 47 C.F.R. §§ 101.69(b) and 101.73(a)).

⁶ API previously has urged the Commission to formally announce the commencement of a unified mandatory negotiation period through the issuance of a Public Notice and to require MSS licensees to provide notice within 90 days to those FS incumbents that they intend to relocate. See *Joint Petition for Clarification and Reconsideration*, filed by the Fixed Wireless Communications Coalition, the Critical Infrastructure Communications Coalition, API, the Association of American Railroads, the Association of Public Safety Communications Officials International, Inc., and the Untied Telecom Council, ET Docket No. 95-18 (Sept. 6, 2000), at pp. 7-9. While API continues to believe that such an approach would be preferable to the adoption of a single, static mandatory negotiation period that could elapse without even the provision of notice to some incumbents, API does not believe that any approach involving the imposition of a single negotiation period for all implicated parties would be practical in an environment where MSS licensees are deploying different types of services (MSS and terrestrial) over a possibly protracted period of time.

E. Existing Relocation Policies Should Not Be Weakened

17. The relocation rules currently in place with respect to FS licensees in the 2.1 GHz band already are a weakened version of the rules governing the relocation of FS incumbents from the 1850-1990 MHz band to make way for PCS licensees -- *i.e.*, the 2.1 GHz band rules provide incumbents with fewer rights and protections than do the PCS relocation rules.⁷ For instance, while the PCS relocation rules entail (with respect to non-public safety licensees) a one-year period for voluntary negotiations and a one-year period for mandatory negotiations, the Commission has adopted a single, two-year mandatory negotiation period (with no voluntary negotiation period) for non-public safety FS licensees in the 2.1 GHz band. (See 47 C.F.R. §§ 101.69(c) and (d)). Further, under the PCS relocation rules, the criteria for “comparable facilities” -- *i.e.*, equivalent throughput, reliability and operating costs -- are applicable only to involuntary relocations; for the 2.1 GHz band, by contrast, the Commission reduced the bargaining power of FS incumbents by including the comparable facilities criteria in the mandatory negotiation rules to serve as a target or goal for the negotiations. (See 47 C.F.R. § 101.73(d)). The Commission also has declined to grant to involuntarily relocated 2.1 GHz band FS incumbents the right (available to PCS-band incumbents) to return to their former frequencies if they find, within 12 months of relocation, that the replacement equipment fails to meet the comparability standard. (See 47 C.F.R. § 101.75(d)).

⁷ In fact, the existing rules with respect to PCS relocations are themselves a weakened version of the rules originally adopted by the Commission to govern such relocations, as

18. API has not challenged on reconsideration any of the aforementioned erosions to incumbents' relocation rights. In this regard, API recognizes that such rule changes may have been deemed necessary by the Commission to foster a rapid and efficient transition to new services. At the same time, API implores the Commission not to use this new rule making proceeding as an opportunity to further chip away at relocation rights, as there clearly would be no justification for doing so. It appears that the 2.1 GHz band ultimately will be used for a wide variety of new services, including mobile satellite services, terrestrial services and "advanced" wireless services. In an environment of such intensive and varied spectrum use, it is particularly critical that the important private internal systems of FS incumbents are protected from harmful interference until appropriate replacement facilities are provided and that no disruptions of service are experienced. Any further weakening of relocation rules and policies would undermine these goals and shift unfairly the balance of rights and interests in favor of new licensees, at the expense of critical infrastructure industries and other traditional FS licensees in the 2.1 GHz band.

F. The Commission Should Address the Issues and Concerns Raised in the Pending "Joint Petition" Filed by API and Others

19. As referenced in footnote 6, on September 6, 2000, API and several other parties filed a *Joint Petition for Clarification and Reconsideration* (hereinafter, "*Joint Petition*") of various aspects of the Commission's *Second Report and Order* in ET

various incumbent rights were eroded on reconsideration. See ET Docket No. 92-9; WT Docket No. 95-157.

Docket No. 95-18. Among other things, this pleading, which remains pending at the Commission, urges the agency to: (1) clarify that an MSS licensee is obligated to relocate an incumbent whenever the MSS licensee would receive interference from, as well as cause interference to, the incumbent's operations (or else forfeit its rights to subsequently request an involuntary relocation); (2) clarify that the ten-year relocation "sunset" period commences with the initiation of relocation negotiations between MSS and FS licensees; (3) confirm that voluntarily self-relocating incumbents in the 2.1 GHz band may obtain reimbursement through the cost-sharing plan; and (4) clarify that license assignments and transfers of control involving incumbent licenses will not result in a loss of primary status. Each of these issues is of continuing relevance to incumbents and should be resolved consistent with the views expressed in the *Joint Petition*.

20. It is API's understanding that the Commission is delaying consideration of the *Joint Petition* and like pleadings pending resolution of the issues raised in the *NPRM* in the instant proceeding and the *Further Notice* in ET Docket No. 00-258. With respect to at least some of the issues pending on reconsideration, however, API submits that there is no reason to delay their resolution and, moreover, that some incumbents may suffer irrevocable harm as a result of such delay. The right to self-relocation is one such issue. (See *Joint Petition* at pp. 9-11). As the 2.1 GHz band has undergone reallocation and now potential *re*-reallocation, FS incumbents have faced continuing and, at this time, heightened uncertainty regarding when, if ever, their systems will need to be relocated (and by whom). The right to self-relocation (as was granted to similarly situated FS

incumbents in the 1850-1990 MHz band) would enable 2.1 GHz FS incumbents to clear their spectrum quickly on their own without forfeiting relocation rights. The Commission's decision whether to grant such self-relocation rights should in no way depend on the nature of the new services that will be occupying the 2.1 GHz band.

21. Another issue that API believes merits prompt attention is whether incumbents may undergo license assignments or transfers of control without forfeiting their primary status and, correspondingly, their relocation rights. (See *Joint Petition* at pp. 11-18). Like the issue of self-relocation, this issue impacts the current expectations and behavior of incumbent licensees, and its resolution should not turn on the Commission's decisions regarding the various proposals in the *NPRM* and *Further Notice*. Accordingly, API urges the Commission to move forward in resolving these and other issues that are contributing to incumbent uncertainty in the 2.1 GHz band. API also requests that, at the very least, the Commission address all pending issues on reconsideration either prior to or together with the issues raised in the *NPRM* and *Further Notice*, rather than at a later date.

III. CONCLUSION

22. API does not oppose the introduction of terrestrial services in the 2.1 GHz band by MSS licensees, provided that precautions are taken to ensure that such services are and remain ancillary to satellite operations. API also agrees with the Commission that a separate technical standard -- TSB-10F -- should be used to assess whether proposed terrestrial operations by MSS providers will threaten interference to incumbent FS

operations. With respect to relocation negotiations, API supports the adoption of a “rolling” two-year mandatory negotiation period, which would begin for each incumbent upon the receipt of notice from the MSS or other new licensee of its intent to negotiate. Finally, API cautions the Commission against the adoption of new rules that further weaken incumbents’ relocation rights, including the right to seek simultaneous relocation of both links in a paired FS assignment, and it asks the Commission to move forward in addressing issues that are pending on reconsideration.

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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