

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands |) | WT Docket No. 02-353 |
| |) | |
| Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service |) | ET Docket No. 95-18 |
| |) | |
| 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 |) | ET Docket No. 00-258 |
| |) | |
| Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands |) | IB Docket No. 01-185 |
| |) | |

To: The Commission

PETITION FOR CLARIFICATION AND RECONSIDERATION

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SUMMARY

As the Commission is aware, the 2.1 GHz spectrum band has been the subject of several ongoing and inter-related proceedings aimed at reallocating portions of this band for new services. As a result of these reallocation proceedings, incumbent Fixed Service (“FS”) microwave licensees in the 2.1 GHz band -- including many American Petroleum Institute (“API”) and Untied Telecom Council (“UTC”) member companies -- will be required to relocate their systems to alternative spectrum bands. API/UTC believe that the Commission, for the most part, has successfully handled the difficult task of developing and adopting relocation rules and policies that fairly balance the competing interests of incumbent licensees and new service providers. The purpose of this Petition for Clarification and Reconsideration is to seek clarity and certainty regarding certain important issues on which the existing rules are silent and to request reconsideration of certain of the Commission’s recent decisions with regard to the 2180-2200 MHz band.

First, API/UTC urge the Commission to clarify that a two-year mandatory negotiation period will apply with respect to non-public safety licensees in the 2110-2150 MHz band. The factors on which the Commission based its decision to shorten the mandatory negotiation period in the 2180-2200 MHz band simply do not apply at 2110-2150 MHz. API/UTC further request that the Commission announce the onset of the mandatory negotiation period in the 2110-2150 MHz band, as well as the onset of the ten-year “sunset” period, by Public Notice following the auction of spectrum in this band and the completion of the licensing process. With respect to the 2180-2200 MHz band, API/UTC request that the Commission reinstate the two-year mandatory negotiation period for non-public safety incumbent licensees in order to ensure, as a practical matter, that there will be an opportunity for meaningful negotiations. Finally, in light of the clear

need that has been demonstrated to relocate at one time both links in a paired FS system, API/UTC urge the Commission to require (or at least create a presumption) that both links will in fact be relocated simultaneously. Otherwise, FS incumbents may be subject to unnecessary costs and burdens, and their important systems may be placed at risk.

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PETITION FOR CLARIFICATION AND RECONSIDERATION

The American Petroleum Institute ("API"), by its attorneys, and the United Telecom Council ("UTC") (together, "API/UTC"), and pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits this Petition for Clarification and Reconsideration ("Petition") of the *Report and Order* ("AWS Order") released in WT Docket No. 02-353 on November 25, 2003¹ and the *Third Report and Order and Third Memorandum Opinion and Order* ("MSS Order") released in ET Docket

¹ The *AWS Order* has not yet been published in the Federal Register.

No. 95-18, ET Docket No. 00-258, and IB Docket No. 01-185 on November 10, 2003.² The Commission's Advanced Wireless Service ("AWS") and Mobile-Satellite Service ("MSS") proceedings both entail the reallocation of spectrum in the 2.1 GHz band for new communications services. Many API and UTC member companies currently operate Fixed Service ("FS") systems in the 2.1 GHz spectrum band to provide critical monitoring and control functions in support of their operations. As a result of the AWS and MSS proceedings, many of these systems may need to be relocated to alternative spectrum bands. API/UTC are filing this Petition to seek clarity, certainty and fairness regarding various issues involving the relocation rules and procedures, specifically: (1) the duration and onset of the mandatory negotiation period in the 2110-2150 MHz band; (2) the date that the ten-year "sunset" period will begin running in the 2110-2150 MHz band; (3) the duration of the mandatory negotiation period in the 2180-2200 MHz band; and (4) procedures necessary to ensure that both paths in a paired microwave link are relocated at the same time.

I. INTRODUCTION

1. API is a national trade association representing approximately 400 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 General Committee on Information Management and Technology. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting

² 68 Fed. Reg. 68241 (December 8, 2003).

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 FS systems 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 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 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. API also participated in the Commission's proceeding to allocate new spectrum for AWS (ET Docket No. 00-258) and to adopt service rules for AWS in the 1.7 and 2.1 GHz bands (WT Docket No. 02-353).

5. The United Telecom Council is the trade association for the telecommunications and information technology interests of the nation's electric, gas, and water utilities and other critical infrastructure industries. Over 750 such entities are members of UTC, and range in size from large investor-owned utilities that serve millions of customers to small rural utilities that serve only a few thousand customers each. Together with the Critical Infrastructure Communications Coalition ("CICC"),³ UTC represents the telecommunications and information technology interests of virtually every utility, pipeline, railroad and other CI entity in the country.

6. Many of the members of UTC operate FS systems in the 2.1 GHz bands, and must relocate to make way for MSS. These FS systems are designed, built and operated to the highest standards in order to provide reliable communications that support the safe, efficient and secure delivery of essential services to the public at large. In many cases, these FS systems are used for SCADA applications that enable remote monitoring and control of critical infrastructure systems. These systems prevent faults from occurring or migrating, thereby avoiding widespread outages or interruptions in service. Utilities also use FS systems as a cost-effective means to provide backbone voice and data communications to many remote locations within their service

³ The CICC is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association and UTC.

territories. As such, they are critical to service maintenance and restoration, and utilities must ensure that their integrity is not compromised, particularly from interference from MSS services. As a result, the members of UTC are keenly interested in and directly affected by the rules for relocating these systems from the 2.1 GHz bands.

II. DISCUSSION

7. The 2.1 GHz band FS systems operated by API and UTC 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. Accordingly, one path in each such paired system has been reallocated to the AWS (to be assigned via competitive bidding at a future date), while the other path has been reallocated to the MSS for use as downlink spectrum. Given existing uncertainty as to both the timing of the AWS auction and the deployment of MSS systems, it is unknown whether the first new licensee to seek relocation of an incumbent FS system will be an AWS auction winner or a MSS service provider. Under these circumstances, it is particularly important that there be clarity as to the particular relocation rules to be applied in each portion of the 2.1 GHz band and that such rules promote a smooth and equitable transition.

8. In its *Second Report and Order* in ET Docket No. 00-258, in which the Commission decided to reallocate spectrum in the 2110-2155 MHz band for AWS,⁴ the agency concluded that the relocation procedures adopted in the “*Emerging Technologies*” proceeding -- as modified in the MSS proceeding (ET Docket No. 95-18) -- would apply with regard to the relocation of all

⁴ 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, ET Docket No. 00-258, *Second Report and Order*, FCC 02-304 (Nov. 7, 2002) (“*AWS Second Report and Order*”).

incumbent licensees in the 2110-2150 MHz band.⁵ At the time that the *AWS Second Report and Order* was adopted, the MSS relocation rules provided, among other things, for a two-year mandatory negotiation period for non-public safety licensees (three years for public safety), to begin when the MSS licensee informs the FS licensee, in writing, of its desire to negotiate.⁶ To implement the Commission’s decision in the *AWS Second Report and Order*, certain of the Commission’s relocation rules in Part 101 were amended to reflect that the policies applicable to MSS relocations also would be applicable in the 2110-2150 MHz band.⁷

9. In its recent *AWS Order* (adopted on October 16, 2003), the Commission reaffirmed that relocation policies based on those developed in the “*Emerging Technologies*” proceeding will apply in the 2110-2150 MHz band.⁸ Confusion arises, however, due to the fact that the Commission subsequently, in its *MSS Order* (adopted on November 5, 2003), has amended certain of the rules and procedures applicable only to the relocation of FS incumbents in the 2180-2200 MHz band by MSS licensees,⁹ leaving gaps and uncertainties as to the rules regarding FS relocations from the 2110-2150 MHz band by AWS licensees.

10. For example, the *MSS Order* shortens the mandatory negotiation period for non-public safety licensees from two years to one year and states that the onset of the negotiation period and ten-year “sunset” period will be triggered by the publication of the *MSS Order* in the Federal Register (which occurred on December 8, 2003).¹⁰ The Commission also, in the *MSS Order*,

⁵ *Id.* at ¶¶ 42-46.

⁶ *See* 47 C.F.R. §§ 101.69(d) and 101.73(d) (2002).

⁷ *See* 47 C.F.R. §§ 101.69(d) and 101.73(d) (2003).

⁸ *See AWS Order* at ¶ 52.

⁹ *See MSS Order* at ¶ 67 (stating that relocation-related decisions set forth therein are limited to 2180-2200 MHz band).

¹⁰ *Id.* at ¶ 77.

backtracks on its prior conclusion that the first new licensee to request relocation should be required to relocate both paths in a paired FS system.¹¹ The text of the *MSS Order* and the implementing “Final Rules” appended thereto specifically state that these rule amendments apply only in the 2180-2200 MHz band. Thus, one may perhaps presume that the version of the *Emerging Technologies/MSS* relocation rules that existed prior to the adoption of the *MSS Order* continues to apply with regard to the 2110-2150 MHz band. However, due to the manner in which the rule amendments to implement the *MSS Order* were drafted (as further discussed below), the Commission’s new rules (to take effect January 7, 2004) will be silent on certain key issues involving relocations from the 2110-2150 MHz band. Because both new licensees and incumbents are entitled to clarity and certainty in the applicable relocation rules, API/UTC have filed this Petition. API/UTC also urge the Commission herein to reconsider certain decisions in the *MSS Order* that threaten to jeopardize incumbents’ relocation rights and the integrity of their systems.

A. The Commission Should Clarify that Non-Public Safety FS Licensees in the 2110-2150 MHz Band Will be Afforded a Two-Year Period for Mandatory Negotiations

11. Following the adoption of the *AWS Second Report and Order*, in which the Commission determined that the “*Emerging Technologies*” relocation procedures (as previously modified in the MSS proceeding) would apply in the 2110-2150 MHz band, Section 101.69(d) of the Commission’s rules was amended to read:

Relocation of FMS licensees **in the 2110-2150 and 2160-2200 MHz bands** will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

- (1) Non-public safety incumbents will have a two-year mandatory negotiation

¹¹ *Id.* at ¶¶ 71-72.

period; and

(2) Public safety incumbents will have a three-year mandatory negotiation period.

47 C.F.R. § 101.69(d) (2003) (emphasis added).¹²

As discussed above, however, the Commission recently shortened the mandatory negotiation period from two years to one year for non-public safety MSS/FS relocations in the 2180-2200 MHz band. As a result, Section 101.69(d) is being amended (effective January 17, 2004) to read:

Relocation of FMS licensees **in the 2180-2200 MHz band** by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004 [one year after Federal Register publication]; and

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005 [two years after Federal Register publication].

See MSS Order at Appendix B, page 51 (emphasis added). Accordingly, it appears that the rule changes made in the *MSS Order* inadvertently remove all reference in Section 101.69(d) to the 2110-2150 MHz band and that, as a result, the Commission's rules will no longer provide any indication as to the duration of the mandatory negotiation period for AWS/FS relocations in that band. In order to avoid confusion and promote fairness in the relocation process, API/UTC urge the Commission to clarify that a two year negotiation period remains applicable in this band with respect to non-public safety licensees.

12. First, and as noted above, the rules adopted to implement the *AWS Second Report and Order* specified that a two-year mandatory negotiation period would apply in the 2110-2150

¹² As discussed in Section C, below, API/UTC urge the Commission to reconsider its decision to shorten the mandatory negotiation period in the 2180-2200 MHz band.

MHz band (for non-public safety FS licensees).¹³ When the Commission subsequently shortened the mandatory negotiation period to one year in the *MSS Order*, it explicitly made this modification only with regard to MSS/FS relocations in the 2180-2200 MHz band.¹⁴ Moreover, the Commission decided to make this modification as a result of factors that are specific to the MSS proceeding. In particular, the FCC stated that “[g]iven the amount of time that has already passed since adoption of the *MSS Second Report and Order*¹⁵ and the upcoming MSS milestone requirements, we believe that this modification is appropriate to maintain the balance of equities between MSS licensees and FS incumbents.”¹⁶ No similar justification exists for shortening the mandatory negotiation period in the 2110-2150 MHz band.¹⁷ The *AWS Second Report and Order*,¹⁸ which reallocated the 2110-2150 MHz band for AWS, was not adopted until November 2002, and new AWS licensees will not be facing any implementation milestones for quite some time given that the AWS auction has not even been scheduled yet. Under these circumstances, the “balance of equities” clearly will be maintained by retaining the two-year mandatory negotiation period for non-public safety incumbent licensees, thereby providing the parties with adequate time to make mutually agreeable arrangements for the relocation of critical FS systems.

B. FCC Direction is Needed With Regard to the Start of the Mandatory Negotiation Period and the Ten-Year “Sunset” Period in the 2110-2150 MHz Band

13. Similar to the manner in which the rule amendments adopted in the *MSS Order* remove

¹³ See 47 C.F.R. § 101.69(d) (2003).

¹⁴ See *MSS Order* at ¶ 77 and implementing regulations.

¹⁵ The *MSS Second Report and Order* to which the Commission refers was adopted in June 2000. See ET Docket No. 95-18, 15 FCC Rcd 12315 (2000).

¹⁶ *MSS Order* at ¶ 77.

¹⁷ As discussed in Section C, below, API/UTC do not even agree with the Commission that the stated justification for shortening the mandatory negotiation period in the 2180-2200 MHz band is a valid one. It is without question, however, that the same justification is not applicable in the 2110-2150 MHz band.

¹⁸ ET Docket No. 00-258, *Second Report and Order*, FCC 02-304 (Nov. 7, 2002).

all reference to the 2110-2150 MHz band in the rule section prescribing the duration of the mandatory negotiation period, these rule amendments also remove all reference to the 2110-2150 MHz band in the rule section that discusses what event will trigger the onset of the mandatory negotiation period. Specifically, prior to the adoption of the *MSS Order*, Section 101.73(d) of the Commission's rules stated that mandatory relocations for FS licensees **in the 2110-2150 and 2160-2200 MHz bands** will commence when the new service licensee informs the FS licensee in writing of its desire to negotiate. Effective January 7, 2004, amended Section 101.73(d) will state that mandatory negotiations **in the 2180-2200 MHz band** will commence on January 7, 2004, with no remaining reference to the 2110-2150 MHz band.¹⁹ Therefore, absent clarification by the Commission, parties will not know when the mandatory negotiation period will begin for this band.

14. API/UTC believe that the date of the onset of the mandatory negotiation period in the 2110-2150 MHz band should be announced by FCC Public Notice, following the AWS auction and the grant of licenses to AWS auction winners. Such an approach was used to trigger the onset of negotiation periods in the 1850-1990 MHz band following the Personal Communications Service ("PCS") auctions and worked well in ensuring that interested parties were aware of relevant dates and the procedures to be employed. It certainly would not serve any rational purpose to start the mandatory negotiation period in the 2110-2150 MHz band at any time prior to the assignment of AWS licenses, as the negotiation period (or some portion thereof) would be rendered meaningless. Nor do API/UTC believe that it would be appropriate to revert to the prior rule that the negotiation period is to begin for all parties when the first new service

¹⁹ Compare 47 C.F.R. § 101.73(d)(2003) with *MSS Order* at Appendix B, page 51 (setting forth revisions to Section 101.73(d)).

licensee notifies the first incumbent of its desire to negotiate. In the *MSS Order*, the Commission agreed with API and other parties that such a rule creates the potential for confusion because not all parties will know when the negotiation period has begun.²⁰ As a result, the Commission decided that it would make more sense to adopt a date certain for the commencement of the mandatory negotiation period, which, in the case of the 2180-2200 MHz band, would be linked to Federal Register publication of the *MSS Order*.²¹ API/UTC urge the Commission to employ such a “date certain” approach in the 2110-2150 MHz band, provided that the chosen date of onset is to occur after the AWS auction and ensuing licensing processes are completed.

15. The FCC also concluded in its *MSS Order* that the Federal Register publication date would trigger the onset of the ten-year “sunset” period with respect to FS relocation rights in the 2180-2200 MHz band.²² Likewise, API/UTC urge the Commission to clarify that the ten-year “sunset” period in the 2110-2150 MHz band will begin running upon the commencement of the mandatory negotiation period for that band.²³

C. The Commission Should Reconsider Its Decision to Shorten the Mandatory Negotiation Period for FS Licensees in the 2180-2200 MHz Band

16. The new one-year mandatory negotiation period for the relocation of non-public safety FS incumbents in the 2180-2200 MHz band is practically meaningless. The earliest

²⁰ See *MSS Order* at ¶¶ 76-77.

²¹ *Id.* at ¶ 77.

²² *Id.*

²³ Section 101.79 of the Commission’s rules -- incorporating the modifications adopted in the *MSS Order* -- provides that the relocation rules in the 2110-2150 MHz band will sunset ten years after the “voluntary period” begins for the first Emerging Technology licensees in the service (presumably the first AWS licensees, in this case). As the relocation rules governing the 2.1 GHz band no longer include a “voluntary” negotiation period, Section 101.79 should be clarified.

milestone to launch a MSS satellite will not occur until January 2005, and most MSS licensees need not launch until July 2006. MSS licensees need not choose the exact 5 MHz of spectrum in which they will operate in the 2180-2200 MHz band until that time. By then, the mandatory negotiation period will have expired. In effect, incumbents cannot negotiate relocation because they have no way of identifying which – if any – MSS licensees would cause interference, until after the expiration of the mandatory negotiation period.

17. As a practical matter, therefore, relocation will occur -- if at all – through the involuntary relocation process. However, the rules for involuntary relocation only provide for the new service licensee to initiate the process. While such an approach made sense when incumbents were provided a meaningful opportunity to negotiate relocation with PCS licensees, in the present context, the involuntary relocation rules could unfairly deny incumbents of *any* opportunity to seek reimbursement for relocation from the band, particularly now that the Commission has denied incumbents the option of self-relocating and seeking reimbursement from later-entering new service licensees. This situation ties the hands of incumbents, forcing them to wait for MSS providers to make the first move, which (if it ever happens), will leave incumbents with a “take-it-or-leave-it” proposition in the form of involuntary relocation.

18. The best remedy would be to restore the mandatory negotiation period in the 2180-2200 MHz band to two years for non-public safety licensees and three years for public safety licensees, commencing upon the date of the publication of the *MSS Order* in the Federal Register. This approach would give incumbents a meaningful opportunity to negotiate relocation with MSS providers without delaying the deployment of MSS services. If anything, by allowing the incumbents an opportunity to negotiate relocation, the FCC would encourage licensees to clear the band more quickly for MSS, thereby improving the quality of service to customers. By

contrast, the present one-year mandatory negotiation period (for non-public safety incumbents) may encourage dilatory behavior by MSS providers in order to avoid the expense of relocating incumbents, either through negotiation or involuntary relocation. As a result, MSS customers could end up suffering the consequences in the form of harmful interference in areas where incumbents remain. Instead, the public interest would be served by restoring the two-year mandatory negotiation period for non-public safety incumbents, which would not prejudice the interests of MSS and would greatly increase the likelihood that incumbents will have at least some opportunity to negotiate the terms of relocation of their important FS systems.

D. To Prevent Disruption to Critical FS Operations, New Licensees Should be Required to Relocate Both Paths in a Paired FS Link

19. In the *AWS Second Report and Order*, the Commission stated that the applicable relocation procedure for paired microwave links in the 2.1 GHz band is that “the first new licensee would relocate both microwave links – including the ‘second’ link that was not in the new licensee’s licensed band” – with a right to 50% reimbursement from the subsequent licensee.²⁴ As API has argued on numerous occasions, and the Commission apparently recognized in the *AWS Second Report and Order*, it simply is not practical or feasible to relocate only one direction in a paired hop.

20. However, in the *MSS Order*, the Commission determined that MSS licensees in the 2180-2200 MHz band will not be specifically required to relocate both links in a paired FS system.²⁵ While the Commission acknowledged that technical considerations will often make it necessary to relocate both paths at once, it does not believe that such a result needs to be mandated by the

²⁴ *AWS Second Report and Order* at ¶¶ 43-44.

²⁵ *MSS Order* at ¶¶ 71-72. Although the Commission apparently believes that this decision is a continuation of existing policy, rather than a policy change, the language in the *AWS Second Report and Order*, as cited above, indicates that the prior policy was in fact to require the first new service licensee to relocate both links in a pair.

Commission. In this regard, the Commission stated that because it would likely be more expensive and complex in many instances to relocate only one link in a paired system, the relocation of the pair at once will typically be the most cost-effective means of providing the incumbent with a seamless transition to comparable facilities and, thus, is likely to occur without an FCC mandate. If, however, there are “individual situations where it is both economically and technically feasible within reason to relocate just one of the paired links,” the Commission believes that such a result should not be precluded.²⁶ Accordingly, the Commission concluded that the decision of whether to relocate both links in a paired system should be left to the negotiation process.²⁷

21. API/UTC urge the Commission to reconsider this decision and reinstate its prior determination that in both the 2110-2150 MHz and 2180-2200 MHz bands, the first new licensee to require use of the spectrum must relocate both links in a paired FS system. The need to relocate at one time 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. In most (if not all) instances, FS spectrum in the 6 GHz band will be 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 6 GHz band transmit frequency paired with a 2.1 GHz band “return” frequency. 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

²⁶ *Id.* at ¶ 72.

²⁷ *Id.*

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.

22. In view of the foregoing, as well as the critical safety and other functions performed by incumbent FS systems, API/UTC strongly disagree with the Commission that the decision as to whether to relocate both links at once should simply be left to the negotiation process. The implementation of such a policy would require incumbents to prove over and over again -- perhaps with costly and time-consuming engineering studies -- what is already known and apparent (*i.e.*, that relocating both links at once is less costly and more efficient than relocating each link separately). Moreover, many incumbents may not even be given the chance to negotiate the terms of their relocations, given the Commission's decision to shorten the mandatory negotiation period in the 2180-2200 MHz band and have it begin before any MSS licensees appear prepared to launch their systems (a decision that API/UTC urge the Commission to reconsider). In other words, many incumbents may find themselves subject to the Commission's "involuntary relocation" rules, whereby MSS or other new service licensees may inappropriately seek to force incumbents to accept single link relocations (leaving incumbents with little recourse other than to seek resolution from the Commission). To protect incumbents from such potential unfair treatment and to preserve the integrity of incumbents' systems, the Commission should adopt a requirement -- or at very least a rebuttable presumption -- that the first new licensee must relocate both links in a paired system. The adoption of such a rule would not prevent single link relocations in unique situations where, for whatever reason, neither party believes that relocating both links is necessary or practical, as the incumbent presumably could choose to waive its right to have both links relocated at once.

23. Given the Commission's decision in IB Docket No. 01-185 to permit ancillary terrestrial

operations by MSS licensees, FS incumbent licensees in the 2.1 GHz band are subject to potential relocation by AWS licensees *and* MSS licensees providing satellite *and/or* terrestrial services. 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 adopt rules and policies aimed at ensuring that FS relocations do not occur in a piecemeal manner that risks disruption to the important safety-related operations of many FS incumbent licensees.

III. CONCLUSION

24. API/UTC appreciate the Commission's ongoing efforts to adopt relocation rules and policies that create a fair balance between incumbents and new service licensees. In this regard, API/UTC note that they have elected not to challenge certain of the Commission's decisions in the *MSS Order* with which API/UTC may not entirely agree, such as the Commission's determination that compensation will not be available for incumbents that choose to self-relocate. On the other hand, API/UTC believe that the Commission's recent decisions have resulted in certain ambiguities that must be clarified with regard to the relocation rules governing the 2110-2150 MHz band -- in particular, the duration and onset of the mandatory negotiation period and the date of onset of the ten-year "sunset" period. API/UTC further believe that: (1) a two-year mandatory negotiation period for non-public safety licensees in the 2180-2200 MHz band is necessary to provide incumbents with a real and meaningful opportunity to negotiate; and (2) the need to relocate at once both links in a paired microwave system is a fundamental matter on which the Commission should provide clear direction to new licensees in order to avoid the imposition of undue burdens on incumbents and potential disruption to important microwave systems.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute

and the United Telecom Council respectfully submit the foregoing Petition for Clarification and Reconsideration and urge the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM
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