

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

In the Matter of)	
)	
Amendment of Part 90 of the Commission's Rules)	PS Docket No. 15-199
to Enable Railroad Police Officers to Access Public)	RM-11721
Safety Interoperability and Mutual Aid Channels)	
)	
)	

**COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS
AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

Kathryn D. Kirmayer
Timothy J. Strafford
ASSOCIATION OF AMERICAN RAILROADS
425 Third Street, SW
Washington, DC 20024
(202) 639-2502

Michele C. Farquhar
Nirali Patel
Noah K. Cherry*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5663

*Licensed in Maryland only

*Counsel to the Association of American
Railroads*

Keith T. Borman
Vice President & General Counsel
AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION
50 F Street, NW
Suite 7020
Washington, DC 20001
(202) 585-3448

November 13, 2015

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION SHOULD AUTHORIZE RAILROAD POLICE TO USE PUBLIC SAFETY INTEROPERABILITY AND MUTUAL AID CHANNELS.	5
A. The Commission Should Adopt a Broad Definition of “Railroad Police Officer” for Purposes of Defining Eligible Users.	5
B. The Commission Should License Railroad Police Departments Rather Than Individual Officers.	6
C. The Commission Should Minimize the Number of Governmental Agency Authorizations and Procedures Necessary for Railroad Police to Use Interoperability and Mutual Aid Channels.	6
D. The Commission Should Adopt Both “Blanket” Licensing and “Mobile Only” Licensing on a Nationwide Basis for Railroad Police Departments’ Use of Mobile and Portable Units.	8
E. The Commission Should Authorize Railroad Police to Operate Base and Control Stations on Interoperability and Mutual Aid Channels.	10
F. The Commission Should Authorize Railroad Police to Use Interoperability and Mutual Aid Channels to Communicate Along and Across U.S. Borders.	10
G. The Commission Should Allow Railroad Police Departments to Participate in Sharing Arrangements and Obtain Licenses to Use Interoperability and Mutual Aid Channels.	11
III. THE COMMISSION SHOULD CONTINUE TO PERMIT RAILROAD POLICE TO OPERATE MOBILE UNITS UNDER CONTRACT WITH PUBLIC SAFETY LICENSEES.	12
IV. CONCLUSION.....	14

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

In the Matter of)	
)	
Amendment of Part 90 of the Commission’s Rules)	PS Docket No. 15-199
to Enable Railroad Police Officers to Access Public)	RM-11721
Safety Interoperability and Mutual Aid Channels)	
)	
)	

**COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS
AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The Association of American Railroads (“AAR”)¹ and the American Short Line and Regional Railroad Association (“ASLRRA”)² (collectively, the “Associations”) submit these comments in response to the Federal Communications Commission’s (“FCC’s” or

¹ AAR is a voluntary non-profit membership organization whose freight railroad members operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR members also include Amtrak, the nation’s principal intercity passenger railroad, and Metra, the primary commuter railroad serving the Chicago metropolitan area. More information on AAR is available at its website: <https://www.aar.org/Pages/Home.aspx>.

² ASLRRA is a non-profit trade association representing the interests of approximately 450 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 38 percent of the national railroad network, touching in origination or termination one out of every four cars moving on the national railroad system, and serving customers who otherwise would be cut off from the national railroad network.

“Commission’s”) Notice of Proposed Rulemaking in the above-captioned proceeding.³ The Associations applaud the Commission’s decision to initiate this rulemaking and fully support the proposal to permit railroad police to use public safety interoperability and mutual aid channels to communicate with public safety entities already authorized to use such channels.⁴

As the Commission recognizes, in order to address public safety or security emergencies, threats, and concerns involving the U.S. rail network, public safety personnel and railroad police officers need to communicate with one another.⁵ Access to interoperability and mutual aid channels will ensure that railroad police can quickly and effectively communicate and coordinate with law enforcement and public safety officials on a range of matters. These include: (1) responses to safety or security related incidents at or near rail property; (2) reporting of and coordinated action to address suspicious activity or objects near rail property; (3) investigations of railroad-related crime that may require railroad police officers to travel far beyond rail property; (4) multi-agency cooperative surges and other joint public safety and security operations (*e.g.*, random coordinated surges by Amtrak police, freight railroad police, commuter railroad police, transit agency police, and local law enforcement officers at hundreds of stations nationally during rush hour periods); (5) coordination with first responders to minimize injuries and damage from incidents involving hazardous materials; and (6) multi-jurisdictional homeland

³ *Amendment of Part 90 of the Commission’s Rules to Enable Railroad Police Officers to Access Public Safety Interoperability and Mutual Aid Channels*, Notice of Proposed Rulemaking, 30 FCC Rcd 10244 (2015) (“*NPRM*”).

⁴ *Id.* ¶ 1.

⁵ *Id.* ¶ 7.

security efforts.⁶ With access to public safety frequencies, railroad police will be able to, among other things, cooperate with other law enforcement personnel to investigate incidents, provide and receive back-up assistance, and offer additional expertise.

In amending its rules in this proceeding, the Commission should (1) ensure that railroad police have the flexibility to determine how best to access public safety interoperability and mutual aid channels; (2) minimize unnecessary administrative burdens on railroad police seeking to access these channels; and (3) minimize burdens on other public safety licensees. To these ends, the Associations recommend that the Commission take the actions discussed in Parts II and III below. *First*, the Commission should adopt a broad definition of “railroad police officer” to ensure that it does not unnecessarily exclude otherwise qualified railroad police officers, including officers employed by each class of freight railroad, Amtrak, Alaska Railroad, and commuter railroads, from the scope of its rules. *Second*, the Commission should license railroad police departments rather than individual officers for administrative efficiency.

Third, the Commission should minimize the number of governmental agency authorizations and procedures necessary for railroad police to use interoperability and mutual aid channels. In particular, the Commission should adopt its proposal to apply the relevant state or Regional Planning Committee’s coordination and administration procedures to applications for authorizations that railroad police departments would need to obtain from a state or local government entity in order to use the 700 MHz interoperability channels. In addition, the Commission should not require railroad police departments to obtain authorizations from a state

⁶ See Comments of the Association of American Railroads, RM-11721, at 4-6 (filed June 30, 2014) (“AAR June 30, 2014 Comments”).

or local government entity in order to access the VHF, UHF, and 800 MHz interoperability channels.

Fourth, the Commission should adopt both “blanket” licensing and “mobile only” licensing on a nationwide basis for railroad police departments’ use of mobile and portable units on interoperability and mutual aid channels. Adopting both approaches will provide railroad police departments flexibility in how they use the interoperable communications equipment they need to carry out their public safety responsibilities. The Commission should issue these licenses on a nationwide basis to ensure that railroad police officers can communicate with public safety entities in other states when necessary.

Fifth, the Commission should permit railroad police to operate base stations and control stations on interoperability and mutual aid channels. Adopting this proposal will allow railroads to, for instance, fill gaps in radio coverage in remote areas.

Sixth, the Commission should adopt its proposal to allow railroad police to use interoperability and mutual aid channels to communicate along and across the border with counterpart operators in Canada and Mexico to the same extent as any other eligible public safety entity. Adopting this proposal will help ensure that railroad police officers can effectively respond to public safety incidents, threats, or concerns involving those jurisdictions.

Seventh, the Commission should clarify that railroad police departments are eligible to participate in sharing arrangements. However, the Commission should not adopt a shared use approach instead of a licensing approach in this proceeding. Rather, the Commission should give railroad police departments flexibility by both allowing them to participate in sharing arrangements and permitting them to obtain licenses to use interoperability and mutual aid channels.

Finally, the Commission should continue to allow railroad police departments to operate mobile units on interoperability and mutual aid channels and other public safety channels under contract with public safety licensees. The agency should preserve the ability of railroad police departments, particularly those without the resources to apply for and obtain licenses, to access interoperability and mutual aid channels in this manner.

II. THE COMMISSION SHOULD AUTHORIZE RAILROAD POLICE TO USE PUBLIC SAFETY INTEROPERABILITY AND MUTUAL AID CHANNELS.

A. The Commission Should Adopt a Broad Definition of “Railroad Police Officer” for Purposes of Defining Eligible Users.

The Commission requests comment on the appropriate definition of “railroad police officer” for purposes of defining the class of users eligible to access public safety interoperability and mutual aid channels.⁷ The agency should adopt a broad definition to ensure that all relevant individuals have access to frequencies needed to carry out their railroad policing responsibilities. Specifically, if the Commission adopts its proposal to use the definition of “railroad police officer” adopted by the Federal Railroad Administration (“FRA”),⁸ the Commission should modify that definition to expressly include the following four categories of officers: (1) officers employed by each class of freight railroad (*i.e.*, Class I, II, and III railroads);⁹ (2) Amtrak police officers;¹⁰ (3) Alaska Railroad police officers; and (4) commuter railroad police officers.¹¹

⁷ *NPRM* ¶¶ 9-12.

⁸ *Id.* ¶ 9.

⁹ *See id.* ¶ 11 (citing commenters’ suggestions to extend eligibility to use interoperability and mutual aid channels to officers of any Class I, II, or III rail carrier).

¹⁰ *See id.* (citing commenters’ suggestions to extend eligibility to use interoperability and mutual aid channels to Amtrak police officers).

Explicitly including these individuals within the definition of “railroad police officer” will (1) avoid unnecessarily excluding otherwise qualified railroad police officers from the scope of the Commission’s rules; and (2) provide certainty and clarity as to which officers are eligible to use public safety interoperability frequencies.

B. The Commission Should License Railroad Police Departments Rather Than Individual Officers.

The Commission seeks comment on its proposal to “licens[e] officers’ employers, *e.g.*, the railroad police department or the railroad itself, with a condition limiting use of the interoperability frequencies to railroad police officers that meet the definition” the agency adopts.¹² The Commission’s rationale for this proposal is that “it would be overly cumbersome to license each officer individually.”¹³ The Associations wholeheartedly agree. Licenses should be granted to railroad police departments for effective management under common guidelines instead of to individual officers assigned across multiple state and local jurisdictions.

C. The Commission Should Minimize the Number of Governmental Agency Authorizations and Procedures Necessary for Railroad Police to Use Interoperability and Mutual Aid Channels.

The Commission requests comment on how to fulfill the statutory requirement that non-governmental entities using 700 MHz narrowband spectrum be authorized by an appropriate

¹¹ As the Commission recognizes, commuter rail systems serve the transit needs of local and regional communities (*e.g.*, urban and suburban areas), and including commuter railroad officers in the Commission’s definition would facilitate coordination between those officers and other public entities already authorized to use interoperability and mutual aid channels. *Id.* ¶ 12.

¹² *Id.* ¶ 13.

¹³ *Id.*

state or local governmental entity.¹⁴ In particular, the Commission proposes (1) to require that “any application filed for use of 700 MHz narrowband channels by a railroad police entity that is not an independent law enforcement agency . . . be accompanied by an authorization from an appropriate ‘state or local government entity,’ *e.g.*, state or local police, or another governmental public safety licensee”;¹⁵ and (2) to apply the state or Regional Planning Committee’s (“RPC’s”) coordination and administration procedures to applications by or on behalf of railroad police seeking to use the 700 MHz interoperability channels.¹⁶ Given that the Commission is statutorily obligated to require railroad police departments’ applications to be accompanied by an authorization from a state or local governmental entity, the Commission should minimize the administrative burdens associated with obtaining such authorizations. Specifically, the Commission should adopt its proposal to apply the state or RPC’s coordination and administration procedures to applications for such authorizations. Doing so will allow for consistency in the application procedures that railroad police departments must follow and thereby prevent them from being subject to disparate application procedures within the same state or region.

The Commission also requests comment on whether to require railroad police “to obtain authorization from the same state or local governmental entity to license the VHF, UHF, and 800 MHz interoperability channels or whether one authorization for each railroad police entity should

¹⁴ *See id.* ¶ 14 (citing 47 U.S.C. § 337(f)(1)); *see also* 47 C.F.R. § 90.523(b)(1).

¹⁵ *NPRM* ¶ 14.

¹⁶ *Id.* ¶ 15.

suffice for all [three] bands unless there is a need to restrict a band.”¹⁷ The Associations submit that the Commission should not require railroad police departments to obtain authorizations from a state or local governmental entity in order to access the VHF, UHF, and 800 MHz interoperability channels. As the Commission expressly acknowledges in the *NPRM*, it has “the discretion to allow railroad police access to [these] interoperability and mutual aid channels *without requiring that they obtain further authorization from a governmental entity.*”¹⁸ The Commission should exercise this discretion and thereby reduce the number of authorizations that railroad police departments must obtain to use the VHF, UHF, and 800 MHz interoperability channels. In particular, the Commission should find that a single FCC authorization granted to a railroad police department encompasses authorization to use all three bands.

D. The Commission Should Adopt Both “Blanket” Licensing and “Mobile Only” Licensing on a Nationwide Basis for Railroad Police Departments’ Use of Mobile and Portable Units.

The Commission proposes employing a “blanket” licensing approach through which it would authorize railroad police departments to use mobile and portable units that are not associated with a base station on interoperability and mutual aid channels if their employer holds any category of Private Land Mobile Radio (“PLMR”) license.¹⁹ The Commission also proposes an “alternative approach of issuing ‘mobile only’ licenses to railroad police, *e.g.*, to accommodate railroad police in the event that their employers do not hold a PLMR license for

¹⁷ *Id.* ¶ 14.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* ¶ 16.

base station infrastructure.”²⁰ The Associations urge the Commission to adopt both of these proposals. A combined blanket licensing and mobile only licensing approach will decrease barriers to railroad police utilizing the interoperable communications equipment they need to fulfill their public safety mission. Railroad police departments whose employers hold a PLMR license would benefit from the certainty and administrative efficiency of a blanket licensing approach. And those departments whose employers do not have such a license should have the option of applying for a mobile only license to help them carry out their public safety responsibilities.

The Commission also seeks comment on the appropriate geographic area within which railroad police should be authorized to operate mobile and portable units on interoperability and mutual aid channels.²¹ The Associations recommend that the Commission authorize such operations on a nationwide basis for several reasons. *First*, railroads often operate across state borders and railroad police must be able to communicate with public safety entities and first responders in any area in which their railroads operate. The Commission should not create a patchwork license regime, which would result in multiple potential points of failure and thereby risk endangering public safety and national security. *Second*, railroad police routinely extend their investigations regarding criminal acts committed on railroad property to much broader areas. To succeed in such efforts, railroad police must be able to communicate with public safety entities of various other jurisdictions, including those across the country. *Third*, geographic restrictions on the licenses would undermine the purpose of the proposed rules—to enhance the

²⁰ *Id.*

²¹ *Id.*

consistency and reliability of communications among departments and agencies seeking to take multi-jurisdictional coordinated preventive and responsive actions to public safety or security incidents, threats, or concerns.

E. The Commission Should Authorize Railroad Police to Operate Base and Control Stations on Interoperability and Mutual Aid Channels.

The Commission seeks comment on whether to allow railroad police to operate base stations and control stations on interoperability and mutual aid channels.²² The Associations recommend that the Commission allow such operations. The Commission is seeking to expand reliable communications across jurisdictions to facilitate joint, coordinated responses to emergency situations and public safety or security incidents, threats, and concerns. Preventing railroad police departments from using base and control stations would needlessly restrict their communications options. A railroad may determine, for example, that it needs to deploy base and control stations in remote areas where gaps exist in radio coverage. Allowing railroad police to operate these stations on the channels at issue would enhance railroad and public safety.

F. The Commission Should Authorize Railroad Police to Use Interoperability and Mutual Aid Channels to Communicate Along and Across U.S. Borders.

The Commission requests comment on its proposal to allow railroad police “to use interoperability channels to communicate along and across the border with counterpart operators in Canada and Mexico to the same extent as any other eligible public safety entity, consistent with international agreements or existing [spectrum] rules.”²³ The Associations support this proposal. Railroads operate near and routinely cross U.S. international borders, and railroad

²² *Id.* ¶ 17.

²³ *Id.* ¶ 19.

police must therefore be able to communicate with their counterparts in Canada and Mexico to the same extent as any other public safety entity in order to effectively respond to public safety incidents, threats, or concerns involving those jurisdictions. For example, Canadian National Railway, an AAR member, operates a rail tunnel that carries significant traffic between Sarnia, Ontario and Port Huron, Michigan. If public safety incidents occur on either side of the Canadian-U.S. border, it would be beneficial for railroad police and public safety officials from both countries to be able to coordinate their response and avoid any miscommunication.

G. The Commission Should Allow Railroad Police Departments to Participate in Sharing Arrangements and Obtain Licenses to Use Interoperability and Mutual Aid Channels.

The Commission seeks comment on whether shared use arrangements pursuant to Section 90.179 of the Commission's rules²⁴ "would be a viable alternative to address the interoperability needs of public safety and railroad police officers instead of licensing railroad police on the interoperability and mutual aid channels."²⁵ Sharing arrangements may be useful to some railroad police departments, and the Commission should clarify that railroad police departments are eligible to participate in such arrangements. However, the Associations submit that sharing arrangements alone are not a viable alternative to licensing. The Commission should give railroad police departments the flexibility they need to effectively carry out their public safety responsibilities by allowing them to not only participate in sharing arrangements but also obtain licenses to use interoperability and mutual aid channels. Giving railroad police departments the ability to obtain such licenses advances the common interest of law enforcement

²⁴ 47 C.F.R. § 90.179.

²⁵ *NPRM* ¶ 25.

organizations and emergency responders in providing reliable and effective multi-agency responses to public safety and security incidents.

III. THE COMMISSION SHOULD CONTINUE TO PERMIT RAILROAD POLICE TO OPERATE MOBILE UNITS UNDER CONTRACT WITH PUBLIC SAFETY LICENSEES.

As AAR has previously explained in this proceeding,²⁶ railroad police communicate with public safety entities today pursuant to Section 90.421 of the Commission's rules.²⁷ This rule authorizes railroad police to install and operate mobile units that are licensed to other public safety licensees, such as state police departments, under contract with those licensees.²⁸ Railroad police officers may also operate hand-held units pursuant to this rule.²⁹ The Commission should preserve and strengthen this important option for non-licensee railroad police departments to communicate with public safety entities. In particular, the agency should adopt its proposal in the *NPRM* to "amend Section 90.421 to more explicitly provide (1) that VHF, UHF, and 800 MHz mobile and portable units may be operated by railroad police on the interoperability and mutual aid channels in an emergency; and (2) that railroad police when performing public safety services within the meaning of Section 337(f)(1) of the Communications Act of 1934, as amended, may communicate using the 700 MHz public safety narrowband interoperability channels."³⁰ In addition, "it is desirable to permit railroad police access to public safety channels

²⁶ AAR June 30, 2014 Comments at 6.

²⁷ 47 C.F.R. § 90.421.

²⁸ *See id.*

²⁹ *Id.*

³⁰ *NPRM* ¶ 23.

other than interoperability and mutual aid channels,”³¹ and the Commission should do so pursuant to Section 90.421.³²

Railroad police departments also need clear authority to operate control stations pursuant to contract on such systems. In many states, the licensees of such systems are willing to have railroad police departments install control stations at railroad police offices in order to ensure better coordination with railroad police. Such control stations can also facilitate the linking of the private circuits used by railroad police into the statewide systems so that local and state public safety officials can more efficiently reach a railroad’s central control center for police operations in the event of an emergency.³³

The Commission should not, however, “rely on Section 90.421 instead of licensing railroad police [departments] on interoperability channels.”³⁴ Rather, the Commission should both (1) license railroad police departments to use public safety interoperability and mutual aid channels; and (2) continue allowing them to operate mobile units on those and other public safety channels under contract with public safety licensees. Nothing in the Commission’s rules precludes the Commission from adopting both approaches. Moreover, adopting both approaches would provide railroads with the necessary flexibility to ensure that railroad police officers and

³¹ *Id.* For example, railroad police departments have been approached by operators of statewide networks seeking their participation in those networks for general public safety communications.

³² 47 C.F.R. § 90.421.

³³ The Commission should provide railroad police departments authority to operate such control stations by (1) adding a note to or amending the text of Section 90.421 of the Commission’s rules, *id.*, to include control stations; and (2) clarifying that railroad police are eligible to participate in sharing arrangements under Section 90.179(c) of the Commission’s rules, 47 C.F.R. § 90.179(c), which expressly permits use of control stations.

³⁴ *NPRM* ¶ 23.

departments are able to communicate with first responders during emergencies. Short line and commuter railroads would especially benefit from such flexibility. Many of these railroads have limited resources and/or small railroad police departments, and therefore, may not be able to obtain their own licenses to use interoperability and mutual aid channels.

IV. CONCLUSION

The Commission should adopt its proposal to authorize railroad police to use public safety interoperability and mutual aid channels consistent with the Associations' recommendations above.

Respectfully submitted,

/s/ Michele C. Farquhar

Kathryn D. Kirmayer
Timothy J. Strafford
ASSOCIATION OF AMERICAN RAILROADS
425 Third Street, SW
Washington, DC 20024
(202) 639-2502

Michele C. Farquhar
Nirali Patel
Noah K. Cherry*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5663

*Licensed in Maryland only

*Counsel to the Association of American
Railroads*

Keith T. Borman
Vice President & General Counsel
AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION
50 F Street, NW
Suite 7020
Washington, DC 20001
(202) 585-3448

November 13, 2015