

**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 |) | |
| |) | |
| |) | |

**REPLY 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 30, 2015

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. INTRODUCTION AND SUMMARY | 1 |
| II. DISCUSSION | 4 |
| A. The Commission Should Allow Railroad Police Departments to Both Participate in Sharing Arrangements and Obtain Nationwide Licenses to Use Public Safety Interoperability and Mutual Aid Channels. | 4 |
| B. The Commission Should Authorize Railroad Police to Operate Base and Control Stations on Interoperability and Mutual Aid Channels. | 6 |
| C. The Commission Should Minimize the Number of Governmental Agency Authorizations and Procedures Needed for Railroad Police to Access Interoperability and Mutual Aid Channels. | 7 |
| III. CONCLUSION | 9 |

**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 |) | |
| |) | |
| |) | |

**REPLY 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 reply comments on the Federal Communications Commission’s (“FCC’s” or “Commission’s”)

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.

NPRM in the above-captioned proceeding.³ All of the commenters in this proceeding support the Commission’s overall 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 In light of this unanimous support, the Commission should act expeditiously to adopt this proposal.

The Associations file these reply comments to address specific licensing approaches and procedures discussed by a few commenters that would (1) unnecessarily limit railroad police departments’ flexibility in determining how best to access the interoperability and mutual aid channels, and (2) potentially encumber their efforts to effectively coordinate with law enforcement and other officials in response to public safety incidents, threats, or concerns.

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 See Comments of the Association of American Railroads and the American Short Line and Regional Railroad Association, PS Docket No. 15-199, at 2 (filed Nov. 13, 2015) (“AAR and ASLRRRA Comments”); Comments of Motorola Solutions, Inc., PS Docket No. 15-199, at 1 (filed Nov. 13, 2015) (“Motorola Comments”) (“[T]he Commission should revise its Part 90 rules to enable railroad police to use public safety interoperability and mutual aid channels.”); Comments of the National Public Safety Telecommunications Council, PS Docket No. 15-199, at 1 (filed Nov. 13, 2015) (“NPSTC Comments”) (“NPSTC fully supports opening access for railroad police officers to the public safety interoperability and mutual aid channels in all bands as proposed.”); Comments of the American Petroleum Institute, PS Docket No. 15-199, at 1 (filed Nov. 13, 2015); Comments of the National Regional Planning Council, PS Docket No. 15-199, at 2 (filed Nov. 10, 2015) (“NRPC Comments”) (“[T]he use of [public safety interoperability and mutual aid channels] by railroad police will be beneficial to public safety users in communities where there is a need to communicate, as needed, with railroad police.”); Comments of the Region 13 and Region 54 Planning Committees, PS Docket No. 15-199, at 2 (filed Nov. 13, 2015) (“RPC Comments”); Comments of APCO, PS Docket No. 15-199, at 2 (filed Nov. 13, 2015) (“APCO Comments”) (“APCO generally favors promoting interoperability between railroad police and public safety to support emergency response[s] . . . involving the U.S. rail network.”).

Consistent with the Associations' initial comments in this proceeding,⁵ the Commission should take the actions discussed below. *First*, the Commission should reject proposals that advocate sharing arrangements as the primary method for railroad police departments to access interoperability and mutual aid channels. Instead, 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. And the agency should allow licensing on a nationwide basis to ensure that railroad police officers can communicate with public safety officials across state lines as needed.

Second, the Commission should permit railroad police to operate base stations and control stations on interoperability and mutual aid channels. Prohibiting such operations would unnecessarily constrain railroad police departments' communications options.

Third, the Commission should minimize administrative burdens on railroad police seeking access to interoperability and mutual aid channels. Specifically, the agency should exercise its discretion to allow railroad police departments to access the VHF, UHF, and 800 MHz interoperability channels without requiring that they obtain further authorization from a state or local governmental entity.

Adopting these proposals is consistent with the Commission's twin goals in this proceeding of (1) "promot[ing] interoperability and facilitat[ing] improved emergency response to railroad-related emergencies," and (2) "eliminat[ing] unnecessary regulatory barriers to use of these channels."⁶

⁵ See generally AAR and ASLRRRA Comments.

⁶ NPRM ¶ 1.

II. DISCUSSION

A. The Commission Should Allow Railroad Police Departments to Both Participate in Sharing Arrangements and Obtain Nationwide Licenses to Use Public Safety Interoperability and Mutual Aid Channels.

In the *NPRM*, the Commission seeks comment on whether shared use arrangements are a viable alternative to licensing railroad police on interoperability and mutual aid channels.⁷ As the Associations have explained, the Commission should not adopt a shared use approach instead of a licensing approach in this proceeding.⁸ Instead, the agency should give railroad police departments much needed operational flexibility by permitting them to both participate in sharing arrangements and obtain licenses to use interoperability and mutual aid channels. Indeed, the National Public Safety Telecommunications Council (“NPSTC”) and Motorola agree with AAR and ASLRRRA that the Commission should allow railroad police departments to obtain “blanket” licenses for the use of mobile and portable units on these channels.⁹ And as the Associations have explained, the Commission should also adopt its proposed “mobile only” licensing approach to accommodate railroad police in the event that their employers do not hold a Private Land Mobile Radio license.¹⁰

The Commission should reject proposals that advocate sharing arrangements as the primary method for railroad police departments to access interoperability and mutual aid

⁷ *Id.* ¶ 25.

⁸ AAR and ASLRRRA Comments at 11-12.

⁹ NPSTC Comments at 5; Motorola Comments at 3.

¹⁰ AAR and ASLRRRA Comments at 8-9.

channels.¹¹ Advocates of such proposals do not sufficiently explain why railroad police departments should be required to rely mainly on sharing arrangements to access these channels. For example, the National Regional Planning Council asserts that shared use is preferable because a sponsoring public safety entity would be “fully aware of their own licensed capabilities and can ensure that any sponsored [railroad police department] will operate within the restraints of the licensee’s FCC authorization.”¹² There is no reason to believe, however, that if railroad police departments obtained licenses to access interoperability and mutual aid channels, they would be any less aware of their own licensed capabilities or operational restraints than public safety licensees. Indeed, the parties advocating a shared use approach also favor permitting railroad police departments to obtain licenses if they are unable to find an appropriately licensed public safety sponsor for a sharing arrangement.¹³ Thus, these commenters recognize that railroad police departments are fully capable of operating on public safety interoperability and mutual aid channels in compliance with an FCC authorization.

One of these commenters also points out that sharing arrangements can be “expedient” and are “locally-focused.”¹⁴ However, this does not mean that sharing arrangements are preferable as a general matter. As the record demonstrates, railroads often operate across multiple jurisdictions.¹⁵ In such circumstances, the “locally-focused” nature of sharing

¹¹ NRPC Comments at 3-7; RPC Comments at 2-7; APCO Comments at 2.

¹² NRPC Comments at 4.

¹³ APCO Comments at 2; NRPC Comments at 4-5; RPC Comments at 5.

¹⁴ APCO Comments at 2.

¹⁵ *See, e.g.*, AAR and ASLRRRA Comments at 9; NPSTC Comments at 4; Motorola Comments at 3.

arrangements may impede railroad police departments' ability to efficiently and effectively coordinate and communicate with other officials to address public safety incidents, threats, or concerns.¹⁶ As NPSTC points out, "obtaining [memoranda of understanding] with the relevant public safety entities would require the dedication of significant resources and time, with no guarantee of success throughout the entire operating area required."¹⁷ The Commission should therefore allow railroad police departments to obtain licenses on a nationwide basis¹⁸ to "enable a significant improvement in railroad police interoperability with other law enforcement" and public safety officials.¹⁹

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

In the *NPRM*, the Commission requests comment on whether it should allow railroad police to operate base and control stations on interoperability and mutual aid channels.²⁰ As the Associations have discussed, the Commission should permit such operations.²¹ And NPSTC's

¹⁶ AAR and ASLRRRA Comments at 9-10.

¹⁷ NPSTC Comments at 4.

¹⁸ See AAR and ASLRRRA Comments at 9-10; Motorola Comments at 3 (arguing that "the geographic scope of the authorization should be sufficiently broad to support the operational needs of railroad police, whose public safety efforts often span many U.S. jurisdictions and expand beyond the railroad tracks"); see also NPSTC Comments at 7 ("Railroad police should be allowed to use the interoperability and mutual aid channels in any area where their respective railroad operates.").

¹⁹ NPSTC Comments at 4.

²⁰ *NPRM* ¶ 17.

²¹ AAR and ASLRRRA Comments at 10.

comments are consistent with the Associations' position.²² To obtain the maximum benefit from its overall proposal in this proceeding, the Commission should ensure that railroad police are not unnecessarily constrained in their efforts to communicate with public safety officials when necessary. Prohibiting railroad police from operating base and control stations on these channels would do just that.

Moreover, commenters opposed to allowing railroad police to operate base and control stations on interoperability and mutual aid channels do not adequately explain why such operations should be prohibited.²³ For example, APCO's opposition is merely based on the premise that adoption of shared use as the primary method of permitting railroad police to access these channels "negates the need to permit railroad police to operate base and control stations."²⁴ As discussed above, however, the Commission should not adopt a shared use approach as the primary method of allowing railroad police to access these channels.

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

In the *NPRM*, the Commission stated that it has "the discretion to allow railroad police access to interoperability and mutual aid channels without requiring that they obtain further authorization from a governmental entity."²⁵ As the Associations have explained, the

²² See NPSTC Comments at 6 ("Any base and fixed stations allowed should be subject to frequency coordination, individually licensed and authorized in accordance with applicable State (SIEC), Regional Planning Committee (RPC) or local interoperability plans. In addition, all operations should be conducted in accordance with the interoperability plans.").

²³ APCO Comments 3; NRPC Comments at 5; RPC Comments at 3, 5, 7.

²⁴ APCO Comments at 3.

²⁵ *NPRM* ¶ 14.

Commission should exercise this discretion and thereby minimize regulatory burdens on railroad police departments seeking to access these channels.²⁶

Motorola states that the Commission should require “railroad police applicants to obtain an authorization from an appropriate governmental entity” because doing so “will ensure that coordination efforts between law enforcement entities and railroad police are undertaken efficiently and in the interest of enhancing public safety operations.”²⁷ AAR and ASLRRRA maintain that the Commission should reduce administrative burdens on railroad police departments seeking to efficiently carry out their public safety responsibilities and require them to obtain only an FCC authorization in order to access the VHF, UHF, and 800 MHz interoperability channels. If the Commission nevertheless decides to require railroad police department applicants to obtain additional governmental authorizations in such instances, the Commission should find that one authorization from a state or local governmental entity for each applicant “should suffice for all [three] bands by default unless there is a need to restrict a band.”²⁸

²⁶ AAR and ASLRRRA Comments at 7-8.

²⁷ Motorola Comments at 4.

²⁸ *NPRM* ¶ 14.

III. CONCLUSION

Consistent with the Associations' initial comments and foregoing reply comments in this proceeding, the Commission should expeditiously adopt its proposal to authorize railroad police to use public safety interoperability and mutual aid channels.

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

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

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*

November 30, 2015