

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
MARITEL, INC.) WT Docket No. 04-257
and) RM-10743
MOBEX NETWORK SERVICES, LLC)
)
Petitions for Rule Making to Amend the)
Commission’s Rules to Provide Additional)
Flexibility for AMTS and VHF Public)
Coast Station Licensees)

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS

The Association of American Railroads (“AAR”), by its undersigned counsel, hereby files its Reply Comments in the above-captioned proceeding. The exclusive focus of these Reply Comments is on the comments filed by the National GMDSS Task Force¹ and the United States Coast Guard (“Coast Guard”) suggesting that certain channels used in the U.S. for land mobile communications should be reallocated for maritime use.

1. In its Comments filed October 12, 2004, AAR addressed the question raised at paragraph 14 of the Notice of Proposed Rulemaking (“NPRM”) concerning alignment of VHF Public Coast (“VPC”) channels with Appendix 18 of the *Radio Regulations* of the International Telecommunications Union (“ITU”). AAR expressed its concern about the eighteen VHF channels in the international maritime allocation that are used in the U.S. for railroad mobile communications pursuant to Section 90.35(b) of the Commission’s

¹ National Implementation Task Force for the Global Maritime Distress and Safety System (“GMDSS”).

rules.² AAR stated that it did not object to the Commission's proposed "alignment" of certain aspects of the U.S. VPC allocation with the ITU *Radio Regulations* as long as appropriate explanatory language is included in the resulting FCC rules to underscore the policy of the United States government that there must be no adverse impact on the channels used in the U.S. for railroad communications.

2. In support of its position, AAR pointed to the record of the 2000 World Radiocommunication Conference ("WRC-2000") and the official report of the U.S. Delegation to the effect that one of the "major objectives"³ of the United States for WRC-2000 was to "[e]nsure that any changes to Appendix 18 do not result in interference on the channels used in the U.S. for railroad mobile communications networks," and that the U.S. Government "will not permit maritime simplex use on the portion of the Appendix S18 duplex channels allocated for railroad use in the U.S. ..."⁴

3. In its Comments filed September 29, 2004, the National GMDSS Task Force ("Task Force") makes reference to the channels used for railroad land mobile operations in the U.S., stating that:

The maritime community is still suffering from the loss of spectrum when portions of the international band were reallocated to Land Mobile many years ago. The Task Force regards that reallocation as especially unfortunate in that it derogated an international frequency plan used by virtually all international shipping arriving in U.S. waters rendering those channels unavailable for their use.

² AAR Comments at 3-6.

³ "United States Delegation Report – World Radiocommunication Conference 2000" transmitted to Secretary of State Colin Powell on July 1, 2001, (hereafter "U.S. Delegation Report") at para. 2.2 (pages 8-9). A copy of the U.S. Delegation Report was included as Exhibit 2 to AAR's Comments.

⁴ *Id.* at para. 3.7.14.2.1 (AAR Comments, Exhibit 2, page 42).

4. The GMDSS Task Force goes on to state that “the Task Force advocates making the unused Public Correspondence channels available for Port Operations in either a simplex or duplex mode *until such time as the International Maritime VHF Band can be restored to its full planned functionality in the U.S.*,” and that the FCC “should align allocation of this spectrum with that of the ITU with respect to use of the spectrum for port operations and ship movement services, in the interest of promoting compatibility with international shipping and increased flexibility.”⁵

5. AAR is opposed to the Task Force’s suggestion that certain land mobile channels that were reallocated from maritime use to land mobile use decades ago should now be returned to maritime use. In this regard, AAR reminds the Commission that the railroads in the U.S. (and Canada, too)⁶ have invested hundreds of millions of dollars in their VHF mobile radio networks over the past five decades – networks that have been recognized repeatedly by the Congress, the executive branch, and this Commission as critical for ensuring safety in rail operations.⁷ AAR hereby registers its very strong objection to the

⁵ Task Force Comments at 1-2, emphasis added.

⁶ The Canadian railroads use the same VHF channel plan as the U.S. railroads, including the channels that are allocated internationally for maritime use.

⁷ *See, e.g.*, In Re Industrial Telecommunications Association, *Order*, DA 04-3375, released October 29, 2004, at paras. 4, 10 (emphasizing the importance of maintaining the integrity of spectrum used for public safety purposes such as railroad communications; and recognizing that railroad mobile radio communications are “critical to the safety and protection of life and property...”); National Telecommunications and Information Administration, *Current and Future Spectrum Use by the Energy, Water, and Railroad Industries*, NTIA Special Publication 01-49 (2002) (recognizing the vital roles the railroad, water,

suggestion of the Task Force that the spectrum on which these vital mobile radio links depend should be reallocated for maritime use.

6. The Coast Guard, in its Comments filed October 12, 2004, also addressed the question of whether the Commission “should align [the U.S.] allocation of this spectrum with that of the ITU with respect to use of the spectrum for port operations and ship movement services, in the interest of promoting compatibility with international shipping and increased flexibility.” Stating that such alignment “is imperative,” the Coast Guard asserts that “[t]his type of alignment has generally been the U.S. government position for over 30 years,” referring to a so-called “U.S. position” at the 1974 ITU World Administrative Radio Conference (“WARC-74”) that “*the IRAC/FCC long range plan is to return all Appendix 18 channels to the maritime mobile service.*”⁸

7. The Coast Guard appears to be suggesting that the current position of the U.S. government is that the Appendix 18 channels used in the U.S. for railroad communications should be re-allocated for domestic use by the maritime community. AAR strongly disagrees, and submits that whatever may have been the “IRAC/FCC long range plan” at the time of WARC-74 clearly *is not* the plan today. The U.S. policy most recently articulated on this matter is the position taken by the U.S. Delegation to WRC-2000, namely, that the VHF mobile radio frequencies used by the railroads in the United

and energy industries play in the Nation’s critical infrastructure, stating “[t]he events of September 11, 2001, have underlined the importance of these industries and the role that they play not only in our daily lives, but in times of disaster response and recovery.”); 47 U.S.C. Sec. 309(j)(2) and accompanying Conference Report (H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572) (extending certain regulatory safeguards to private internal radio systems operated by railroads and other “critical infrastructure” entities in view of the public safety nature of their communications systems).

⁸ Coast Guard Comments at 5, n. 3, emphasis added.

States are of paramount importance, and that nothing should be done do jeopardize the railroads' use of those frequencies.⁹

8. As stated in its Comments, AAR has no objection to the Commission's suggestion in this proceeding that it "align" its VPC spectrum allocation with that of the ITU with respect to (1) single-frequency operation and (2) use of the spectrum for "port operations and ship movement services." However, AAR strongly urges that, if the Commission undertakes such "alignment," a footnote be included after the table at Section 80.371(c) of the rules to incorporate the language of footnote (m) in ITU Appendix 18, as well as the relevant language from the U.S. Delegation Report expressing the intent of the U.S. government regarding simplex operations on channels used for railroad communications in the United States. Such a footnote should read as follows:

These channels may be operated as single frequency channels in the U.S, subject to special arrangement between the U.S. and other interested or affected administrations. The FCC will not permit single frequency use in the United States on any frequency listed in Appendix 18 of the ITU *Radio Regulations* that also is identified as subject to railroad frequency coordination in Section 90.35(b) of the Commission's rules.¹⁰

9. Including such language as part of the Commission's rules would be consistent with the position taken by the United States at WRC-2000 and would place the international maritime community on notice that, notwithstanding the Commission's

⁹ It is somewhat paradoxical that the Coast Guard, of all U.S. government entities, is now suggesting a position on this matter that is directly contrary to that of the U.S. Delegation to WRC-2000, given that its own officer, Captain Clifford Pearson, was an official spokesperson for the United States at WRC-2000 on the topic of Agenda Item 1.18. See Exhibit 2 to AAR Comments (Report of U.S. Delegation), at 51 (Annex A), 53 (Annex B), 67 (Annex C) and 83 (Annex G).

¹⁰ Reference in AAR's Comments to Section 90.35(c) should have been to Section 90.35(b) of the Commission's rules.

“alignment” of its rules with certain aspects of ITU Appendix 18, the Commission will not allow maritime single-frequency operation in the U.S. on any Appendix 18 channels that also are used for railroad mobile communications networks pursuant to Section 90.35(b) of the Commission’s rules.

10. In conclusion, AAR respectfully submits that, if the Commission is inclined to adopt the proposed “alignment” described at paragraph 14 of the NPRM, it should incorporate as part of the rules the explanatory language recommended herein, and under no circumstances should the Commission reallocate for maritime use any of the VHF channels used in the U.S. for railroad communications.

Respectfully submitted,

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