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

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	)	WT Docket No. 08-256
	)	
In the Matter of	)	FCC File Nos. 0003634433-38,
	)	0003634442-48, 0003634450,
Request of PTC-220, LLC for Waivers of	)	0003634452-54, 0003634456, 0003634458,
Certain 220 MHz Rules	)	0003634459, 0003634461, 0003634463,
	)	0003634465, and 0003634466

MEMORANDUM OPINION AND ORDER

ADOPTED: JUNE 25, 2009 **RELEASED: JUNE 25, 2009**

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a Request for Waivers and Extension ("Waiver Request") filed by PTC-220, LLC ("PTC-220").[1] PTC-220 seeks a five-year waiver of Sections 90.767, 90.769, and 90.743 of the Commission's rules[2] and a five-year extension of the construction deadlines for twelve Part 90 220 MHz licenses. PTC-220 also requests a waiver of Section 90.715 (base/mobile configuration requirements), Sections 90.713(a) and 90.717(b) (commercial use restriction), and Section 90.735 (station identification requirement) where relevant. For the reasons set forth below, we grant the Waiver Request to the extent provided herein.

II. BACKGROUND

2. PTC-220 is a joint venture of Ekanet, Inc. (a subsidiary of Union Pacific Corporation) ("Union Pacific") and Norfolk Southern Railway Company (a subsidiary of Norfolk Southern Corporation) ("Norfolk Southern").[3] On June 19, 2008, PTC-220 acquired twelve 220 MHz licenses from Access 220, LLC ("Access 220").[4]

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[1] Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules, WT Docket No. 08-256, FCC File Nos. 0003634433-38, 0003634442-48, 0003634450, 0003634452-54, 0003634456, 0003634458, 0003634459, 0003634461, 0003634463, 0003634465, and 0003634466 (filed Oct. 31, 2008).

[2] 47 C.F.R. §§ 90.767, 90.769, and 90.743.

[3] Waiver Request at 2.

[4] *Id.* at 2. The licenses include two Phase I nationwide licenses; one L Block nationwide license; six J Block Regional Economic Area Group ("REAG") licenses; and three E Block Economic Area ("EA") licenses, with the following respective call signs: WPFP444, WPFR284, WPOI701, WPOI702, WPOI703, WPOI704, WPOI705, WPOI706, WPOI708, WPOI774, WPOI800, and WPVL860. *Id.* at Appendix A.

3. *Positive Train Control.* PTC-220 intends to develop and deploy a nationwide, interoperable positive train control system ("PTCS"), which is an integrated system designed to monitor train activity and prevent train collisions by using onboard radio devices to automatically monitor a train's speed, location and related data within the train's authorized travel area, also known as "authority."[5] In practice, a radio device transmits data to a network operations center, which uses this information to manage track congestion, supervise "movement authorities," enforce speed limits, monitor and report train diagnostics, and issue alarms.[6] PTCS also checks track side (or "wayside") communications points for data regarding broken rails, proper switch alignment and signals and can then use this information to calculate locomotive speed and braking requirements.[7] Further, PTCS can warn a locomotive engineer to reduce speed and, if the warning is not heeded, the system can remotely brake the locomotive, potentially avoiding an accident.[8]

4. *Rail Safety Improvement Act of 2008.* On October 16, 2008, Congress enacted the Rail Safety Improvement Act, which requires the railroad industry to deploy PTCS.[9] By April 16, 2010, each Class I railroad carrier is required to develop and submit to the Secretary of Transportation a plan for implementing a PTCS ("PTC Implementation Plan"),[10] which must be approved or disapproved within 90 days.[11] All PTCS must be implemented by December 31, 2015.[12] According to PTC-220, the Federal Railroad Administration ("FRA") has yet to propose and adopt the regulations that will guide its assessment of each PTC Implementation Plan,[13] but PTC-220 expects that the FRA will issue proposed regulations in the fourth quarter of 2009.[14]

5. *Comments and Replies.* The Waiver Request was placed on Public Notice for comment on December 24, 2008.[15] Five parties filed in support of the waiver and no comments were filed in

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[5] *Id.* at 2.

[6] *Id.* at 3; *see also* Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104(i)(3), 122 Stat. 4848, 4858 (2008) ("Rail Safety Improvement Act") (defining a positive train control system as "a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position").

[7] *See* Comments of BNSF Railway ("BNSF") at 2.

[8] *Id.* at 2.

[9] *See* Rail Safety Improvement Act, 122 Stat. 4848.

[10] *Id.* Class I railroad carriers are those with annual revenues greater than or equal to $346.8 million. Federal Railroad Administration, Freight Railroading, *available at* http://www.fra.dot.gov/us/content/4 (last visited Feb. 25, 2009).

[11] Rail Safety Improvement Act, 122 Stat. at 4857. If the Secretary of Transportation disapproves, the railroad must submit a corrected PTC Implementation Plan within 30 days. *Id.*

[12] *Id.* For Class I carriers, the plan must include positive train control implementation governing operations on its "main line over which poison- or toxic-by-inhalation hazardous materials ... are transported." *Id.* The term "main line" is defined as a "segment or route or railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually." *Id.* at 4858.

[13] Reply Comments of PTC-220 at 8 ("PTC-220 Reply").

[14] *Id.* at 8.

[15] Wireless Telecommunications Bureau Seeks Comment on Request by PTC-220, LLC for Waiver and Extension of Time to Construct and a Request for Other Rule Waivers Regarding Part 90 220 MHz Licenses, *Public Notice,* 23 FCC Rcd 18331 (WTB 2008). Comments were due on January 23, 2009 and replies were due on February 9, 2009.

opposition; PTC-220 filed a reply.[16] The FRA "strongly supports" the waiver because positive train control will "provide for avoidance of train collisions, enforcement of speed limits, and protection of maintenance-of-way personnel."[17]

III. DISCUSSION

6. *Request for Waiver of the Construction Requirements and Substantial Service Showing.* PTC-220 requests a waiver of the applicable construction requirements set forth in the Commission's rules for a five-year period.[18] PTC-220 also requests a five-year waiver of the separate license renewal requirement that a substantial service showing be filed with its license renewal applications.[19] Nine of its twelve 220 MHz licenses had construction and renewal deadlines on March 22, 2009; two have deadlines in September 2009, and one has a deadline of July 11, 2012.[20] PTC-220 asks that the five-year waivers of its construction deadlines start from the effective date of our decision on the Waiver Request.[21] In support of its request, PTC-220 offers to "submit regular (*e.g.*, semi-annual) status updates to the Commission."[22]

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[16] Comments were filed by the American Public Transportation Association ("APTA"), Amtrak, the Association of American Railroads ("AAR"), BNSF, and FRA.

[17] Comments of the FRA at 1. The FRA has also stated that PTCS will "improve railroad safety by significantly reducing the probability of collisions between trains, casualties to roadway workers and damage to their equipment, and over speed accidents." Federal Railroad Administration, Positive Train Control, *available at* http://www.fra.dot.gov/us/content/784, (last visited Feb. 25, 2009) ("FRA Positive Train Control Overview").

[18] Waiver Request at 7-8. Under the 220 MHz geographic area licensing rules, licensees may satisfy their construction requirements either by meeting specific coverage metrics or by providing substantial service. The coverage requirement for 220 MHz EA and Regional licensees is to construct a sufficient number of base stations to provide coverage to at least one-third of the population of its EA or REAG within five years of the issuance of its initial license and at least two-thirds of the population of its EA or REAG within ten years of license grant. 47 C.F.R. § 90.767(a). The coverage requirement for 220 MHz nationwide licensees is to construct a sufficient number of base stations to provide coverage to a composite area of at least 750,000 square kilometers or 37.5 percent of the U.S. population within five years of the issuance of its initial license and a composite area of at least 1,500,000 square kilometers or 75 percent of the population within ten years of license grant. 47 C.F.R. § 90.769(a). In the alternative, all geographic area 220 MHz licensees can meet the five- and ten-year construction requirements by providing "substantial service." 47 C.F.R. §§ 90.767(a), 90.769(a). Substantial service is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal. 47 C.F.R. § 90.743(a)(1).

[19] Waiver Request at 7-8. Section 90.743 requires all licensees seeking renewal of their authorizations at the end of their license term to file a renewal application demonstrating that they have provided "substantial service" during their past license term and that they have substantially complied with applicable FCC rules, policies, and the Communications Act. 47 C.F.R. § 90.743.

[20] More specifically, PTC-220 had a construction and renewal deadline of March 22, 2009 for its L Block nationwide license, six REAG licenses, and two EA licenses (the third EA license has a construction deadline of July 11, 2012; the two Phase I nationwide licenses have construction deadlines of September 19 and 23, 2009). Waiver Request at Appendix A. On March 9, 2009, PTC-220 filed renewal applications for its nine licenses that were to expire on March 22, 2009. *See* FCC File Nos. 0003765219, 0003765223, 0003765233, 0003765237, 003765247, 0003765252, 0003765254, 0003765258, and 0003765260. PTC-220 also asks the Commission to clarify any related effect of the Waiver Request on the renewal process. *Id.* at 7.

[21] *Id.* at 7.

[22] PTC-220 Reply at 8.

7. PTC-220 argues that the requested waiver is consistent with the underlying purpose of the construction requirements – to ensure prompt delivery of services, prevent stockpiling and warehousing of spectrum and promote investment in and deployment of new technologies – and that denial of a waiver would frustrate the purpose of the construction requirements.[23] PTC-220 contends that a waiver of the construction requirements will promote faster development of a PTCS because it will not be required to devote time, labor, and financial resources to build a "stopgap" nationwide system.[24] PTC-220 states that it has no intention of warehousing its 220 MHz licenses and that its members, as well as other members of the railroad industry, have a strong track record of expeditiously putting spectrum into use.[25] PTC-220 argues that a waiver would promote regulatory parity with other wireless radio licensees for whom the Commission has granted waivers for reasons such as lack of viable equipment or technological challenges.[26] PTC-220 contends that a waiver will facilitate the deployment of a cutting-edge niche service in remote and rural regions of the country.[27]

8. PTC-220 also argues that it faces unique and unusual factual circumstances and that adherence to the construction deadlines would be inequitable, unduly burdensome, and contrary to the public interest.[28] PTC-220 states that it will not be able to finalize equipment and network design, obtain FRA approval, and deploy a PTCS prior to the March 2009 construction deadline applicable to most of the licenses,[29] but with a grant of relief, anticipates being able to obtain FRA approval, select vendor(s), begin manufacturing, and begin initial deployment within the next several years.[30] Further, PTC-220 maintains that a five-year construction extension is justified because the equipment options it has been developing are "not quite ready for widespread deployment of positive train control technology across a nationwide system."[31] PTC-220 argues that grant of a waiver is in the public interest because the planned PTCS will enhance rail safety and provide advanced monitoring to prevent train collisions across thousands of miles of rail lines.[32] PTC-220 states that its nationwide, interoperable network will use a common radio protocol which will allow multiple railroads to safely operate on the same track, and which will allow trains to transition from one railroad to the next at the operational track speed without interruptions to the PTCS.[33] PTC-220 maintains that an "additional five years will ensure that a reliable

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[23] Waiver Request at 8.

[24] *Id.* at 9.

[25] *Id.* at 9-10. PTC-220 notes that its members have already used its 220 MHz licenses to initiate positive train control pilot programs and that the interoperability agreement between the nation's top four Class I railroads provides further evidence of PTC-220's commitment to developing and deploying a nationwide positive train control network. PTC-220 also states that its members have deployed portable locomotive control technology using shared frequencies in the 450-460 MHz band one year after the FRA issued guidelines for the technology. *Id.*

[26] *Id.* at 10.

[27] *Id.* at 11.

[28] *Id.* at 12.

[29] *Id.*

[30] *Id.* at 15. PTC-220 also argues that it faces unique circumstances because it obtained its 220 MHz licenses with approximately nine months remaining to satisfy the ten-year construction requirements. *Id.* at 13.

[31] *Id.* at 15.

[32] *Id.* at 15, 19.

[33] *Id.* at 17.

system, which prevents train-to-train collisions, enforces speed limits, and protects roadway workers operating near the trains, is developed."[34]

9. *PTC-220's Additional Requests for Waiver.* PTC-220 requests a waiver of the base/mobile configuration requirements of Section 90.715,[35] which provides that "[f]requencies shall be assigned in pairs with base station frequencies taken from the 220-221 MHz band with corresponding mobile and control station frequencies being 1 MHz higher and taken from the 221-222 MHz band."[36] PTC-220 explains that, due to an asymmetric traffic load (with more traffic to, than from, the mobile units), the PTCS will use base/mobile stations that can transmit and receive signals on either the 220-221 MHz band or the 221-222 MHz band,[37] and a waiver will prevent loss of key safety functions, particularly in high congestion areas shared by multiple freight and commuter railroads.[38] PTC-220 maintains that a waiver will not increase the risk of harmful co-channel interference to other spectrum users.[39] For its non-nationwide licenses, PTC-220 also requests a waiver of the Section 90.735 station identification requirements, which ensure that both the Commission and other spectrum users can identify sources of interference.[40] PTC-220 argues that its REAG licenses constitute a *de facto* nationwide license with no potential for co-channel interference.[41] Moreover, PTC-220 requests a waiver of the identification standards for its three E Block EA licenses as they will be integrated into a single, nationwide PTCS.[42] Finally, PTC-220 requests a waiver of Sections 90.713(a) and 90.717(b) of our rules, which designate certain 220 MHz nationwide Phase I licenses as "commercial,"[43] indicating that it will operate on a private, non-commercial basis to deploy PTCS to enhance track safety.[44]

10. *Legal Standard.* We may grant a request for a waiver when: (i) the underlying purpose of the rules(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[45] In addition, we may grant an extension of the construction period if the licensee demonstrates that failure to meet the construction

[34] *Id.*

[35] *Id.* at 18.

[36] 47 C.F.R. § 90.715(a).

[37] Waiver Request at 18-19.

[38] *Id.* at 19-20.

[39] *Id.* at 20. PTC-220 notes that other users on the E Block frequencies in areas adjacent to its E Block EA licenses will be able to readily determine whether PTC-220's operations are the source of interference through the Commission's licensing database and other publicly available information. *Id.* at 24-25.

[40] 47 C.F.R. §§ 90.435, 90.735; *see* Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, *Further Notice of Proposed Rulemaking,* 9 FCC Rcd 2863, 2880 ¶ 81 (1994) ("*CMRS FNPRM*").

[41] Waiver Request at 23. Nationwide systems are exempt from the station identification requirement. 47 C.F.R. § 90.735(a).

[42] Waiver Request at 23.

[43] *Id.* at 21.

[44] *Id.* at 21-22. PTC-220 argues that it has no reasonable alternative to operating the positive train control system as a private system and that such a waiver is consistent with Commission precedent. *Id.* at 21.

[45] 47 C.F.R. § 1.925(b)(3).

deadline is due to involuntary loss of site or other causes beyond its control.[46]

11. *Waiver of the Construction Requirements and Substantial Service Showing.* In light of the unique factual circumstances of this case, we grant a five-year waiver of Sections 90.767, 90.769, and 90.743, to the extent described below and subject to the reporting requirements and additional conditions imposed herein. Accordingly, PTC-220 will be required to comply with our construction requirements for each of its 220 MHz licenses on or before March 22, 2014, which is five years after the construction requirement applicable to the majority of its 220 MHz licenses.[47] Regarding our renewal requirements set forth in Section 90.743, we only waive, for a five-year period, the requirement that PTC-220 submit a substantial service showing with any renewal application. At or before the expiration of the five-year waiver (March 22, 2014), PTC-220 must make the requisite substantial service and rule compliance showing for purposes of license renewal, as required pursuant to Section 90.743.[48]

12. We agree with PTC-220 that it faces unique circumstances in the build-out of its 220 MHz licenses. Specifically, Congress has tasked the railroad industry with deploying PTCS as part of a comprehensive, long-term strategy for improving railroad safety.[49] The Rail Safety Improvement Act requires implementation plans to be submitted for FRA approval by April 16, 2010 and PTCS networks to be implemented by December 31, 2015.[50] We note that Congress did not specifically mandate the use of any particular spectrum, nor direct the Commission to set aside such spectrum solely for railroad use in the implementation of PTCS. Nonetheless, prior to the enactment of the Rail Safety Improvement Act, PTC-220 had already identified the 220 MHz band as compatible with its overall plan for deploying a PTCS and acquired its 220 MHz licenses.[51] We agree that comprehensive deployment of a nationwide, fully integrated PTCS will require a number of steps, none of which will be completed before the first of PTC-220's construction and renewal deadlines in March 2009. For example, PTC-220's member companies[52] will not file their PTC Implementation Plans with the FRA for approval until April 16, 2010, more than one year after the first of PTC-220's renewal/construction deadlines. Moreover, the FRA has yet to adopt regulations to govern its assessment of these PTC Implementation Plans.[53] In addition, the record indicates that PTC-220 has been working with multiple manufacturers, equipment suppliers, and technology vendors to develop the equipment necessary to deploy a full-scale PTCS network, but that

[46] 47 C.F.R. § 1.946(e)(1).

[47] As PTC-220 requested in its Waiver Request, we consolidate the applicable extended construction deadlines for each of its 220 MHz licenses, including PTC-220's two Phase I Nationwide licenses under call signs WPFR284 and WPFP444, previously subject to September, 2009 deadlines, and PTC-220's E Block EA license under call sign WPVL860, previously subject to a July, 2012 deadline. *See* Waiver Request at 7 n. 19. Accordingly, consistent with the five-year waiver granted herein, all of the Licenses will now have a construction deadline of March 22, 2014. We also note that the required notification of construction must be filed within 15 days of the expiration date of the construction or coverage period. *See* 47 C.F.R. § 1.946(d).

[48] 47 C.F.R. § 90.743.

[49] *See* Rail Safety Improvement Act, 122 Stat. at 4852, 4856-58.

[50] *Id.*

[51] *See id.* and Waiver Request at 2 (PTC-220 acquired its 220 MHz licenses in June 2008, several months before Congress enacted the Rail Safety Improvement Act in October 2008).

[52] According to PTC-220, BNSF and CSX may become member companies of PTC-220. *See* PTC-220 Reply at 7. In addition, PTC-220 states that Union Pacific and Norfolk Southern have "entered into an agreement with BNSF Railway and CSX Corporation for the development of a nationwide, interoperable positive train control system." Waiver Request at 4.

[53] PTC-220 Reply at 8. PTC-220 expects proposed regulations to be issued in the fourth quarter of 2009. *Id.*

such equipment is not yet ready for "widespread deployment . . . across a nationwide system."[54] The combination of these unique circumstances supports a waiver grant.

13. We also find that a five-year waiver of the construction requirements will serve the public interest because PTCS has the capability to dramatically improve railroad safety by preventing train-to-train collisions, enforcing speed limits, and protecting roadway workers working near trains, among other things.[55] Ultimately, granting a five-year waiver will serve the Commission's goal of "promoting safety of life and property through the use of wire and radio communications."[56] In addition, PTC-220 intends to make the network available to other railroads and commuter lines by entering into lease agreements or other service arrangements, and will include substantial rural build-out.[57] A five-year waiver will enable PTC-220's member companies to obtain FRA approval for their PTC Implementation Plans, and will allow PTC-220 to finalize equipment and technology choices, and then complete the task of construction, thereby realizing these safety benefits.

14. PTC-220 states that it cannot provide a detailed, systemwide build-out plan until the FRA adopts regulations to guide its review of railroad carriers' PTC Implementation Plans and subsequently approves these Plans.[58] In this regard, we remind PTC-220 that licensees are required to construct on a license-by-license basis and that, in markets where PTC-220 holds multiple channel blocks, it must satisfy our construction rules for each block it holds within a particular market.[59] Although the Commission may consider the nationwide, integrated nature and scope of PTC-220's positive train control network in evaluating whether the licensee has met its construction and renewal requirements for each of its licenses, we reiterate that "[c]onstruction must occur in each individual license area, on each licensed channel block, in order to comply with the Commission's construction requirements."[60]

15. Until it can provide a detailed, systemwide build-out plan for its PTCS network, PTC-220 offers to provide the Commission with regular status reports regarding its construction progress.[61] Accordingly, as a condition of our waiver grant, PTC-220 must provide the Commission with a detailed status report of its construction progress on a semi-annual basis ("Construction Status Report"). The first Construction Status Report must be filed with the Commission within six months from the date of release of this *Memorandum Opinion and Order* and every six months thereafter until all PTC-220 member companies have received FRA approval for their PTC Implementation Plans.[62] Each Construction Status

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[54] Waiver Request at 9, 15. We note, however, that PTC-220 asserts that it is constructing a "head start" PTCS in the Los Angeles area. PTC-220 Reply at 6.

[55] See discussion *supra* at paras. 3 and 5.

[56] 47 U.S.C. § 151. In addition to greatly improving train safety, PTC-220 states that PTCS "may also enable a railroad to improve scheduling operations, running time, reliability, asset utilization, and track capacity." Waiver Request at 4-5, *quoting* the Senate Commerce, Science, and Transportation Committee, S. Rep. No. 110-270, at 5 (2008).

[57] PTC-220 Reply at 7.

[58] *Id.* at 8.

[59] Cingular Interactive, L.P.; Showing of Substantial Service Pursuant to Section 90.665(c), *Order*, 16 FCC Rcd 19200, 19203 ¶ 7 (WTB 2001).

[60] *Id.*

[61] PTC-220 Reply at 8.

[62] We clarify that companies becoming PTC-220 members after the release of this *Memorandum Opinion and Order* will also be subject to the requirements and conditions set forth herein.

Report must include the status of: (1) FRA regulations governing PTCS implementation; (2) equipment development; (3) the pilot programs initiated by Norfolk Southern and Union Pacific, including Union Pacific's build-out in Los Angeles, California; (4) the addition of new members to PTC-220; (5) lease agreements or other service arrangements for third parties to use PTC-220's PTCS; (6) an update on any PTC Implementation Plans that have been approved by the FRA to date; and (7) any other information relevant to PTC-220's construction of its 220 MHz licenses. In addition, as a condition of this waiver grant, PTC-220 must provide the Commission with a copy of each member company's PTC Implementation Plan as approved by the FRA within one week of receiving approval for all member companies' Plans.[63]

16. As a further condition of our waiver grant, within two months after submitting all PTC-220 member companies' PTC Implementation Plans to the Commission, PTC-220 must provide the Commission with a detailed Systemwide Build-out Plan ("Systemwide Build-out Plan"). At a minimum, the Systemwide Build-out Plan must include sufficient information for the Wireless Telecommunications Bureau to determine how each of PTC 220's licenses subject to this order will be constructed, specifically: (1) detailed maps of all tracks to be covered as part of PTC-220's PTCS; (2) specific spectrum that will be deployed; and (3) timeline for deployment. Finally, within six months of filing its Systemwide Build-out Plan, and every six months thereafter until it files construction notifications for all of its 220 MHz licenses, PTC-220 shall provide the Commission with a report detailing its progress in implementing its Systemwide Build-out Plan ("Construction Progress Reports"). All filings must be made in WT Docket No. 08-256.[64]

17. We emphasize that the extraordinary relief granted herein is inextricably tied to the congressionally mandated implementation of a PTCS and the substantial public interest benefits that will accrue from a nationwide interoperable rail safety network. Accordingly, to help ensure that we achieve the public safety objectives PTC-220 cites as justification for a five-year build-out extension, we find that any transaction PTC-220 may enter regarding the licenses subject to this waiver, from the release date of this order until the Commission's acceptance of PTC-220's construction notifications for any such licenses, will not be eligible for the Commission's immediate approval procedures adopted in the *Secondary Markets* proceeding, and therefore will be subject to both prior public notice and Commission review.[65] In addition, should PTC-220 seek to transfer, assign, partition, disaggregate, or lease any of its 220 MHz licenses or any portion of such licenses during this period, PTC-220 must include, as an exhibit to the application seeking Commission approval for such transaction, a sufficient demonstration as to how the proposed transaction is fully consistent with PTC-220's statutory obligation for timely implementation of a PTCS.

18. *Additional Waivers*. We find that a grant of a waiver of the base/mobile configuration requirements contained in Section 90.715 of our rules is in the public interest, and will benefit PTCS in highly congested areas shared by multiple freight and commuter railroads. With regard to PTC-220's

[63] We note that the Secretary of Transportation is authorized to assess civil penalties for violations of the Rail Safety Improvement Act's provisions relating to positive train control implementation, including for "failure to submit or comply with a plan for implementing positive train control." Rail Safety Improvement Act, 122 Stat. at 4857.

[64] Consistent with the Rail Safety Improvement Act's provision of authority to assess civil penalties for violating the new law, we note that failure to comply with the conditions of this waiver grant, including timely submission of required reports, may result in Commission enforcement action and/or waiver modification or cancellation.

[65] *See* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17554-55 ¶¶ 101-103 (2004); *see also* 47 C.F.R. § 1.9030(e)(2) (*de facto* transfer leases), 47 C.F.R. § 1.948(j)(2) (transfers, assignments, partitioning and disaggregation).

three nationwide and six REAG licenses, we agree that there is limited potential for co-channel interference and therefore grant the requested waiver. Similarly, we find that waiver of the station identification requirement contained in Section 90.735 of our rules is warranted for PTC-220's six REAG licenses. While the Commission adopted station identification rules to ensure that both the Commission and other spectrum users could identify sources of interference,[66] in certain instances, it has determined that station identification is unnecessary, because licensees operate on exclusive channel blocks on a nationwide basis or in defined regions (*e.g.*, metropolitan statistic areas, rural statistical areas) and are readily identifiable through the Commission's licensing records or other publicly available information.[67] The same rationale is applicable in this case, insofar as PTC-220's six REAG licenses essentially form a *de facto* nationwide license, and there will be no co-channel users in close geographic proximity.[68]

19. Regarding PTC-220's three E Block EA licenses, however, we adopt additional notification procedures to further mitigate potential co-channel interference from PTC-220's operations with 220 MHz band E Block licensees in adjacent markets. Although potentially interfering transmissions should be limited to areas along established rail lines – often rural, sparsely populated areas – and transmissions originating from train radios should be predictable given the regular scheduling of trains, we find it prudent to require PTC-220 to meet certain minimal notification procedures to minimize the burden on co-channel adjacent-market 220 MHz licensees in determining whether or not PTC-220's operations are causing interference. Specifically, we shall require PTC-220 to notify all co-channel 220 MHz band licensees in adjacent markets 30 days prior to commencing operations on any of its three E Block EA licenses. Such notification must include a point of contact within PTC-220 who will be able to address any concerns regarding interference. PTC-220 will be required to cure any instances of actual interference that may occur to other 220 MHz band licensees at its own expense. Any reported and verified interference from operation of PTC-220's service must be resolved promptly; unresolved interference may result in action by the Commission requiring PTC-220 to suspend operation of the offending transmitter until the interference is resolved.[69]

20. Finally, we find that it is in the public interest to waive the commercial use restrictions contained in Sections 90.713(a) and 90.717(b) of our rules to allow PTC-220 to implement a PTCS on a private basis. The Commission has granted waivers of the commercial use restriction where the underlying system provided public safety, spectrum and efficiency benefits as well as served the

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[66] *See CMRS FNPRM,* 9 FCC Rcd at 2880 ¶ 81.

[67] *Id.* For example, the Commission does not require station identification for cellular, nationwide 220 MHz, nationwide paging, MTA-based specialized mobile radio, and geographic VHF public coast ("VPC") stations. *See* Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 FCC Rcd 7988, 8089-90, 8092 ¶¶ 210, 216 (1994); Implementation of Sections 3(n) and 332 of the Communications Act, *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 6341 (2000); Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 3120, 3157-58 ¶ 72 (2004).

[68] Regarding PTC-220's three E Block EA licenses, while there is the potential for co-channel inference in adjacent markets, the extent of interference may be mitigated by the limited location of transmission origination and predictability of interference from mobile radios. If an adjacent market licensee does experience co-channel interference, it can determine if the source is a site-specific incumbent because site-specific incumbents will be transmitting station identification information. *See* Waiver Request at 24.

[69] *See* Aloha Partners, L.P. Request for Waiver of Section 27.60, *Memorandum Opinion and Order,* 20 FCC Rcd 3744, 3751-52 ¶ 14 (WTB 2005) (where proposed operations for which licensee sought waiver increased potential for interference to TV viewers of channel 58, Commission conditioned waiver grant on notification of potentially affected viewers and prompt curation of actual, verified interference at licensee's cost).

Commission's spectrum flexibility goals.[70] The record demonstrates that all of these factors are present in the instant case.

IV. ORDERING CLAUSE

21. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4 (j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), and 303(r) , and sections 0.331 and 1.106, of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.106, that the Request for Waivers filed by PTC-220, LLC on October 31, 2008 (FCC File Nos. 0003634433-38, 0003634442-48, 0003634450, 0003634452-54, 0003634456, 0003634458, 0003634459, 0003634461, 0003634463, 0003634465, and 0003634466), IS HEREBY GRANTED to the extent provided, and subject to the reporting requirements and additional conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

J. D. Schlichting

James D. Schlichting
Acting Chief
Wireless Telecommunications Bureau

[70] Application for Consent to the Assignment of a Five-Channel 220 MHz Nationwide License (Call Sign WPWY753, formerly WPTC968) from Rush Network Corp. to the AAR, *Order,* 18 FCC Rcd 24711, 24713 ¶ 6 (WTB 2004).