

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

In the Matter of)	WT Docket No. 08-256
)	
Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules)	Call Signs WFPF444, WPFR284, WPOI701, WPOI702, WPOI703, WPOI704, WPOI705, WPOI706, WPOI708, WPOI774, WPOI800, and WPVL860

FIRST CONSTRUCTION STATUS REPORT

Background. On June 25, 2009, the Commission issued a Memorandum Opinion and Order (“Waiver Order”) granting an extension, until March 22, 2014, of the construction and substantial service showing requirements applicable to the 220 MHz licenses held by PTC-220, LLC (“PTC-220”).¹ As explained in its waiver request, PTC-220 was formed to oversee the development and deployment of positive train control (“PTC”) systems using 220 MHz spectrum. PTC systems are designed to prevent train collisions by managing track congestion, enforcing speed limits, monitoring and reporting train diagnostics, and issuing alarms, among other functions. The Rail Safety Improvement Act, passed by Congress in 2008, requires the railroad industry to deploy PTC systems by December 31, 2015.² As an interim step, each Class I

¹ *Request of PTC-220 LLC for Waivers of Certain 220 MHz Rules*, Memorandum Opinion and Order, DA 09-1425 (rel. June 25, 2009) (“*Waiver Order*”). The Waiver Order also granted waivers of certain Part 90 technical rules applicable to the licenses held by PTC-220.

² See Rail Safety Improvement Act, 122 Stat. 4848.

railroad carrier is required to submit to the Federal Railroad Administration (“FRA”), by April 16, 2010, a plan for implementing a PTC system (“PTC Implementation Plan”).³

As a condition of the license construction extension granted by the Waiver Order, the Commission required PTC-220 to file a construction status report every six months until all PTC-220 member railroads have received approval from the FRA for their PTC Implementation Plans.⁴ The reports must include the status of: (1) FRA regulations governing PTC implementation; (2) equipment development; (3) the pilot programs initiated by Norfolk Southern and Union Pacific, including Union Pacific’s build-out in the Los Angeles area; (4) the addition of new members to PTC-220; (5) lease agreements or other service arrangements for third parties to use PTC-220’s PTC system; (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.⁵ This is the first such report.

FRA regulations. On July 21, 2009, an 80-page Notice of Proposed Rulemaking (“NPRM”) was published in the Federal Register that set forth the FRA’s proposed PTC rules.⁶ The NPRM detailed the required functionalities of PTC systems and the means by which they would be certified. It also proposed the contents of the PTC Implementation Plans and the process for submission of those plans for review and approval by FRA. In a press release related to the issuance of the NPRM, the FRA noted that it was “coordinating efforts with the Federal

³ The plans must be approved or disapproved within 90 days. *Id.* at 4857. If the Secretary of Transportation disapproves, the railroad must submit a corrected PTC Implementation Plan within 30 days. *Id.*

⁴ *Waiver Order* at ¶ 15.

⁵ *Id.*

⁶ *See* 74 Fed. Reg. 35950 (July 21, 2009).

Communications Commission to make a sufficient amount of radio frequency spectrum available, which is essential for PTC technology to function properly.”⁷

Written comments in response to the NPRM were due by August 20, 2009. In addition, on August 13, 2009, the FRA held a public hearing to provide interested parties an opportunity to provide oral testimony on the NPRM.⁸ To date, the NPRM remains pending at the FRA. An FRA official recently indicated to PTC-220’s counsel that the clearance of the final rules is in process, but declined to provide an estimated date for their issuance.

New PTC-220 members. PTC-220 is currently a joint venture between subsidiaries of Union Pacific Corporation (“UP”) and Norfolk Southern Corporation (“NS”). On December 14, 2009, UP and NS entered into a definitive agreement for the sale of member interests in PTC-220 to subsidiaries of CSX Corporation (“CSX”) and Burlington Northern Santa Fe Corporation (“BNSF”). After consummation of the proposed transaction, the four entities – representing the four largest railroads in the U.S. – will each hold 25% of PTC-220. PTC-220 expects to file an application for transfer of control later this month. Pending FCC approval of the transaction, consummation is expected in 1Q 2010.

In conjunction with the addition of BNSF as a member of PTC-220, BNSF will be contributing to PTC-220 the eleven 220 MHz licenses it recently acquired from SMR Management, Inc.⁹ BNSF had acquired these licenses for the purpose of deploying its own PTC system. By pooling these licenses with the licenses already held by PTC-220, the spectrum can

⁷ “FRA Issues NPRM on Technology to Prevent Train Collisions, Press Release (July 16, 2009), *avail. at* www.fra.dot.gov/us/press-releases/242.

⁸ 74 Fed. Reg. 36152 (July 22, 2009).

⁹ See ULS File No. 0003906654 (application for assignment of licenses from SMR Management, Inc. to BNSF Railway Company). The transaction consummation notice was accepted on November 21, 2009. See File No. 0004040669.

be used more efficiently and can be more easily accessed by other railroads for PTC purposes. The parties expect to file an application for assignment of the licenses later this month.

Equipment development. As indicated in PTC-220's 2008 waiver request, the rail industry has already been working with vendors, including Meteor Communications Corp. ("MCC"), a subsidiary of BNSF, on the development of 220 MHz radio equipment for PTC systems. On December 14, 2009, BNSF entered into an agreement to sell 75% of MCC to subsidiaries of UP, NS and CSX so that, after consummation, MCC will be owned by the same four railroads that will own PTC-220, with each holding a 25% interest. An application for transfer of control of MCC is expected to be filed later this month.

The agreement for the purchase of the interests in MCC by the other railroads includes a Statement of Work which sets out the objective for MCC to develop and deliver 220 MHz radios designed for locomotives, wayside and base station environments. In addition, MCC will develop communications protocol software, communications gateways and systems management software that will be needed for the PTC system, a complete communications system that will satisfy the requirements for an interoperable PTC system to be used by the member railroads. Under the current timetable, the manufacture of the first radio devices should commence by the end of 2010 or Q1 2011.

Pilot programs. Using PTC-220's 220 MHz spectrum, UP initiated two pilot routes using 220 MHz spectrum: one from Spokane, Washington to Eastport, Idaho, and one from North Platte, Nebraska to close to Bill, Wyoming. UP completed the installation of 53 wayside radios on these routes, and a total of twenty locomotives were configured with preliminary 220 MHz radios for propagation testing in conjunction with the installed wayside radios. However, due to the progress being made with the industry-wide interoperable radio equipment, testing was

temporarily halted and will resume once the more refined, interoperable versions of the PTC radios become available.

NS also has initiated two separate but contiguous pilot routes running from Charleston, South Carolina to Columbia, South Carolina, and then from Columbia, South Carolina to Charlotte, North Carolina. NS has constructed 79 wayside locations using the 220 MHz spectrum along these routes. These stations are currently operational for testing. Moreover, NS equipped 40 locomotives with 220 MHz radios that can receive transmissions from the wayside locations. NS began preliminary field testing between wayside and locomotive stations during the 3rd quarter of 2009, conducting propagation testing and switch-status coding verification from the wayside locations. NS will install 10 base stations when the interoperable radio equipment becomes available.

As previously announced, UP is working to construct a positive train control network in the Los Angeles basin, which serves Metrolink, a regional commuter rail system, by the end of 2012.¹⁰ The territory includes portions of Los Angeles, Riverside, Orange, and San Bernardino counties. UP expects to begin deploying wood poles for the wayside stations by February 2010. Radio equipment is expected by the end of 2010.

Third-party use of the PTC system. Because the development of the PTC system is still in progress, there is no PTC system in place for third parties to use. However, PTC-220 has given permission to BSNF Railway and its subsidiary Meteor Communications Corp. to use certain PTC-220 spectrum on a limited, temporary basis at three locations in Washington state for the purpose of testing PTC equipment.

¹⁰ See “*Freight railroads pledge to install advanced safety measures by 2012,*” Los Angeles Times (Oct. 9, 2008), available at <http://www.latimes.com/news/printedition/california/la-me-metrolink9-2008oct09,0,5279929.story>.

PTC Implementation Plans. PTC-220 member railroads are awaiting the FRA's final PTC rules before drafting their PTC Implementation Plans.

Other information. When PTC-220 acquired its 220 MHz spectrum in 2008, there were active spectrum leases associated with a number of the licenses. In order to clear the spectrum for PTC use, PTC-220 has worked to relocate four of the non-railroad spectrum lessees. Only two spectrum lessees currently remain. PTC-220 has also coordinated with the prior licensee, Access 220, LLC, to identify, through spectrum monitoring, incumbent site-based licensees within PTC-220 license areas that were not using their spectrum. In some cases, licensees have agreed to surrender their unused licenses. As PTC-220 moves closer to deploying its PTC radios, PTC-220 will continue to take steps to ensure that adequate spectrum is available for PTC devices.

Conclusion

As demonstrated above, PTC-220 and its members have made substantial progress in the past six months in moving towards the development of a PTC system. Most significantly, PTC-220's members have negotiated and signed three agreements that together will expand the spectrum pool and increase the sharing of 220 MHz spectrum for PTC operations, as well as ensure the timely development of 220 MHz PTC communications systems and radios. In addition, UP and NS each initiated two pilot routes using the 220 MHz spectrum. Given this important groundwork, and with the FRA's final PTC rules expected at any time, PTC-220 anticipates that progress on PTC development will continue expeditiously in 2010.

Respectfully submitted,

/s/ Michele C. Farquhar _____

Edwin Kemp and Tom Schnautz
Co-Presidents
PTC-220, LLC
1400 Douglas Street, Stop 640
Omaha, NE 68179
Phone: (402) 544-4883
Facsimile: (402) 233-2943
efkemp@up.com
tom.schnautz@nscorp.com

Michele C. Farquhar
David L. Martin
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004
Phone: (202) 637-5663
Facsimile: (202) 637-5910
mcfarquhar@hhlaw.com

Counsel to PTC-220, LLC

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