

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

In the Matter of)	
)	
Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules)	WT Docket No. 08-256
)	
SMR Management, Inc. Petitions for Second Build-Out Deadline Extensions for Stations WPOJ271, WPOJ272, WPOJ273, WPOJ274, WPOJ275, WPOJ276, WPOJ277, WPOJ278, WPOJ279, WPOJ280, and WPOJ281)	

CONSTRUCTION STATUS REPORT

Background. On November 2, 2009, the Mobility Division (the “Division”) of the Wireless Telecommunications Bureau issued a letter to SMR Management, Inc. (“SMR”) granting SMR’s waiver request for a five-year extension of the construction and substantial service showing requirements applicable to the above-referenced 220 MHz licenses (the “Licenses”) held at that time by SMR.¹ The waiver was granted in the context of a proposed assignment of the Licenses to BNSF Railway Company (“BNSF”), which sought the Licenses to deploy a positive train control (“PTC”) system.² That transaction was consummated on November 20, 2009. The Licenses were later assigned from BNSF to PTC-220, LLC (“PTC-220”) on April 1, 2010. PTC-220, formed for the purpose of overseeing the development and deployment of nationwide, interoperable PTC systems, is comprised of subsidiaries of the four

¹ See Letter from Roger Noel, Chief, Mobility Division, to Lawrence J. Movshin, Counsel to SMR Management, Inc. (Nov. 2, 2009).

² Pursuant to the Rail Safety Improvement Act, 122 Stat. 4848, all Class I railroads are required to deploy PTC by December 31, 2015. 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.

largest U.S. railroads: Union Pacific Corporation (“UP”), Norfolk Southern Corporation (“NS”), CSX Corporation (“CSX”), and BNSF.

As a condition of the waiver grant, SMR or any subsequent assignee of the Licenses is required to submit a Construction Status Report (“Report”) beginning six months after the date of waiver grant, and every six months thereafter until the licensee receives Federal Railroad Administration (“FRA”) approval for its plan to implement PTC. The Reports must include the status of: (1) FRA regulations governing PTC implementation; (2) PTC equipment development; and (3) any other information relevant to the construction of the Licenses.

The SMR waiver grant, including the condition to file semi-annual Reports, is similar to the June 25, 2009 waiver granted to PTC-220 for its original 220 MHz licenses.³ PTC-220 filed its first Report on December 23, 2009. Although the instant Report is the first one specifically covering the (former SMR) Licenses, this Report is, in effect, an update of PTC-220’s December 2009 Report. The SMR waiver letter also specifies that all filings must be made in WT Docket No. 08-256.

FRA Regulations and Filings. On January 15, 2010, the FRA promulgated final PTC rules, totaling 125 pages in the Federal Register.⁴ Consistent with the statutory deadline, each PTC-220 member railroad filed its PTC Implementation Plan with the FRA by April 16, 2010. The plans must be approved or disapproved by the FRA within 90 days. If a plan is disapproved, the railroad must submit a corrected PTC Implementation Plan within 30 days.

Equipment Development. As reported in PTC-220’s December Report, the rail industry has for some time been working with vendors, including Meteorcomm LLC (“Meteorcomm”),

³ *Request of PTC-220 LLC for Waivers of Certain 220 MHz Rules*, WT Docket No. 08-256, Memorandum Opinion and Order, DA 09-1425 (rel. June 25, 2009) (“*Waiver Order*”). However, unlike the SMR waiver, the PTC-220 order also granted waivers of certain Part 90 technical rules.

⁴ 75 Fed Reg. 2598.

on the development of 220 MHz radio equipment for PTC systems. Pursuant to a transaction consummated on April 1, 2010, the four railroad members of PTC-220 each obtained a 25% interest in Meteorcomm.⁵ The agreement for the purchase of the interests in Meteorcomm included a Statement of Work, which set out the objective for Meteorcomm to develop and deliver 220 MHz radios designed for locomotives and wayside and base station environments. In addition, Meteorcomm is developing a complete communications system – including communications protocol software, communications gateways and systems management software – that will satisfy the requirements for interoperable PTC systems to be used by the member railroads. Under the current timetable, the manufacture of the first radio devices should commence by the end of 2011.

Other Information Relevant to Construction of the Licenses. As previously announced, UP is working to construct a PTC network in the Los Angeles Basin by the end of 2012.⁶ The territory includes portions of Los Angeles, Riverside, Orange, and San Bernardino counties. UP recently began installing radio equipment support structures along portions of track in this area. These support structures will be used for the PTC wayside stations.

On January 11, 2010, BNSF (as the then-licensee of the Licenses) filed license modification applications that requested a waiver of certain technical rules, contained in Sections 90.715(a) and 90.735, that would make it impractical to use the Licenses in the PTC system

⁵ Prior to this transaction, Meteorcomm was a wholly-owned subsidiary of BNSF and existed as Meteor Communications Corporation.

⁶ 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>.

being developed. This waiver request was granted on January 22, 2010.⁷ The grant of this waiver request clears the way for incorporating the Licenses into the pool of spectrum that will be built-out by PTC-220 member railroads.

Conclusion. Since the grant of the SMR waiver request in November 2009, the Licenses have received the necessary technical waivers and have been successfully assigned to PTC-220, which significantly expands the pool of 220 MHz spectrum available for use in the PTC systems being developed by PTC-220 and its members. In addition, the FRA issued its final PTC regulations, and the PTC-220 member railroads each filed PTC Implementation Plans. Finally, all of PTC-220's members have made an investment in Meteorcomm, which will help ensure that there will be timely development of 220 MHz PTC communications systems and radios. Thus, progress continues on pace for the deployment of the PTC, consistent with the deadlines established by statute and by the FCC's waiver grants.

Respectfully submitted,

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⁷ See, e.g., ULS File No. 0004089367. By its terms, the waiver transfers with the Licenses, to the extent they are being used for PTC applications. PTC-220 previously obtained a waiver of these same rules for its original 220 MHz licenses.