Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	
And Southern California Regional Rail	)	
Authority	)	WT Docket No. 10-83
Applications to Modify License and Assign	)	
Spectrum for Positive Train Control Use, and	)	FCC File Nos. 0004153701 and
Request Part 80 Waivers	)	0004144435

OPPOSITION TO PETITION TO DENY

Southern California Regional Rail Authority ("SCRRA"), by its attorneys, hereby opposes the Petition to Deny filed by Environmentel LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, and Warren Havens (collectively, "Havens")[1] in the above-captioned docket on April 28, 2010 (the "Petition"). The Petition has 87 pages of repetitive, previously rejected, speculative, unsupported or demonstrably false theories and allegations, and it fails to raise the required substantial and material question of fact as to whether the grant of the above-captioned applications would serve the public interest. Accordingly, the Petition itself should be denied, and the above-captioned applications granted in a timely manner, to allow SCRRA to rapidly introduce federally mandated Positive Train Control ("PTC") technology in its operations.

This Opposition will address only Havens' attacks on SCRRA's proposed use of the AMTS spectrum for PTC, and on the waiver requests and certification necessary to facilitate such use. SCRRA will not address Havens' repetitive attacks on Maritime Communications/Land Mobile LLC

[1] Warren Havens is the President of each of the filing entities.

("MCLM"), which have already been considered and rejected numerous times by the Bureau and the Commission.[2]

I. Introduction

As noted in the applications at issue in this proceeding, SCCRA operates the Metrolink commuter rail service, providing the people of Southern California a safe, reliable and environmentally friendly commute option. Currently, Metrolink operates seven different train lines serving 55 train stations, and has 512 operating route miles (including shared miles) of track. On an average weekday, Metrolink serves over 40,000 riders and runs 149 trains.

Public safety is the primary concern for any operator of a train system, and robust, reliable, advanced telecommunications is a critical tool for insuring safe operations. Congress recognized this when it enacted the Rail Safety Improvement Act of 2008, which mandates development and implementation of positive train control ("PTC") on "Class I" and passenger railroads by December 31, 2015.[3] PTC systems use radio frequencies to monitor train activity, prevent train collisions and worker injuries, and enhance public safety. In these systems, radio devices located on board a train transmit and receive data to and from radio devices installed along the track and at a network operations center. Information is transmitted regarding that train's location and related route data, along with additional information regarding where the train may travel safely. The integrated onboard system then

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[2] *See, e.g., Maritime Communications/Land Mobile LLC*, Order, 21 FCC Rcd 8794 (WTB 2006); *recon. denied, In the Matter of Application of Maritime Communications/Land Mobile LLC*, Order on Reconsideration, 22 FCC Rcd 4780 (WTB 2007), *review pending*; *see also, In the Matter of Mobex Network Services, LLC*, Memorandum Opinion and Order, FCC 10-39 (rel. March 16, 2010). As the Bureau knows, the pendency of the application for review noted above does not prevent the grant of the instant applications. *See, Application of AMTS Consortium, LLC*, Order on Reconsideration, 22 FCC Rcd 1597 (WTB 2007) at para. 5 ("The filing of an application for review or petition for reconsideration does not by itself act to stay the challenged action. Consequently, the pendency of PSI's application for review did not preclude consent to ACL's application to assign spectrum to NUSCO."), *app. for review denied, In the Matter of Application of AMTS Consortium, LLC*, Memorandum Opinion and Order, 25 FCC Rcd 526 (2010).

[3] *See* Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (2008) ("RSIA").

automatically monitors the train's speed and location with respect to the train's area authorized for travel, also known as "authority." Once implemented, positive train control systems will manage track congestion and improve safety, in part by supervising and enforcing "movement authorities" and speed limits. PTC will also continuously monitor and report train diagnostics, issue alarms (for example, broken rails and incorrect switch alignments), and monitor radio transmissions from "wayside" systems, among other functions.[4]

As the Federal Railroad Administration ("FRA") has stated, railroads are undertaking a "massive effort," with a "significant investment of manpower and other resources" to deploy PTC systems.[5] SCRRA is subject to the PTC mandate, and it is aggressively pursuing an implementation strategy to meet an earlier deadline of 2012. However, as demonstrated in its Waiver Request, SCRRA has concluded, after significant study, that AMTS spectrum is the only practicable solution. SCRRA has further concluded after significant study, that in order to utilize this spectrum in a manner consistent with PTC requirements, it must obtain waiver of several Part 80 AMTS rules.

II. Havens' General Attacks on the Use of Waivers for AMTS Spectrum, and on the Public Interest Importance of PTC, Are Irreparably Flawed.

While the Petition's attacks against particular SCRRA waiver requests will be addressed in Section III below, in this Section we address Havens' more general attacks on the SCRRA waiver requests: that SCRRA has failed "to show a compelling public interest case for PTC," that SCRRA is "effectively seeking changes appropriate for a rulemaking," and that the proposed

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[4] *See, e.g.*. Federal Railroad Administration, Positive Train Control (PTC), http://www.fra.dot.gov/us/content/784 (last visited February 23, 2010); *see also* Letter from Joseph C. Szabo, Administrator, FRA, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC, ULS File Number 0003766889, at 1 (dated Oct. 9. 2009) ("2009 FRA Letter") (supporting several applications by BNSF Railway Company ("BNSF") and SMR Management, Inc. to facilitate positive train control deployments in the 220 MHz band); Letter from Mark Schulze, Vice President - Safety, Training & Operations Support, BNSF, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC, ULS File Number 0003766889, at 1 (dated Oct. 16. 2009) (supporting the same applications).

[5] *See* 2009 FRA Letter, *supra* note 4, at 2.

waiver requests are contrary to spectrum efficiency. Petition at pages 33-34. These vague and unsupported assertions are irreparably flawed, and do not raise a substantial and material question of fact as to the public interest in granting the applications.[6]

SCRRA begins here with the clear public interest value in the provision of PTC. Outside of vague and unsupported comments regarding the cost of PTC, the Petition fails to show any specific facts that would undercut the obvious public interest value of PTC, as set out in detail in SCRRA's Waiver Request. Indeed, the Petition fails to even attempt to make such a showing. [7] Thus, as set forth in the Waiver Request, it is uncontested that:

> -Congress has, through the enactment of the RSIA, mandated the implementation of PTC, and done so on the basis of findings that PTC will significantly improve rail passenger safety. Congress based its findings in part on findings from the National Transportation Safety Board, including the finding that PTC could have prevented the train accident in Chatsworth, California in September of 2008 in which 25 lives were lost.[8]
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> - Department of Transportation Secretary Raymond LaHood has emphasized the importance of implementing PTC, calling it "life-saving technology" and stating that the FRA believes positive train control systems will make "freight, intercity and commuter rail lines safer for the benefit of communities across the country."[9]
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> - The FCC has also already recognized the public interest in facilitating PTC systems, noting that they have "the capability to dramatically improve railroad safety by

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[6] The Petition also asserts (at page 32) generally that "not only did SCRRA reject any communications with us to solve or mitigate differences, but it had an obligation to do so under these rules that require VSL's and ENL's consent." SCRRA is mystified as to how to respond to this bizarre statement: SCRRA is not aware of any current "differences" to solve or mitigate with Havens, is not aware of any communications from Havens regarding any such differences (much less any that were "rejected"), and in any case, SCRRA is under no such "obligation," since it is not currently a licensee in the AMTS service.

[7] The two sentences of vague and unsupported assertions in the Petition (at page 34) regarding the cost of PTC are irrelevant to the Bureau's task here: SCRRA knows of no precedent for the Bureau to take such issues into consideration, and in any case, SCRRA is mandated by federal law to implement PTC, regardless of the cost.

[8] *See, e.g.*, 154 CONG. REC. S10035 (2008) (statement of Sen. Boxer).

[9] Department of Transportation, *FRA Issues NPRM on Technology to Prevent Train Collisions,* *http://www.dot.gov/affairs/2009/fra0409.htm* (last visited May 7, 2010). The FRA enacted final PTC rules on January 12, 2010. *See, "U.S. Transportation Secretary Ray LaHood Announces Historic New Safety Standards for Freight and Passenger Trains," available at* *http://www.fra.dot.gov/Pages/press-releases/339.shtml* (last visited May 7, 2010).

preventing train-to-train collisions, enforcing speed limits, and protecting roadway workers working near trains, among other things."[10]

The Petition also did not contest the following facts shown in SCRRA's Waiver Request:

-SCRRA's provision of PTC must be interoperable with the other major rail operators in Southern California—Union Pacific and BNSF—with whom the Metrolink service shares tracks.

-Both Union Pacific and BNSF are members of the PTC-220 consortium,[11] and thus they will use 220 MHz spectrum on their PTC systems with which Metrolink's PTC system must interoperate. However, Union Pacific and BNSF have informed Metrolink that there likely will not be sufficient capacity on the PTC-220 spectrum in Southern California to accommodate Metrolink's operations.[12]

-It is therefore necessary for SCRRA to obtain enough suitable spectrum in the working range of the 220 MHz band, but after extensive spectrum research by engineers and other technical consultants to identify appropriate frequencies, SCRRA found that the only viable option was to purchase a partitioned portion of an existing AMTS geographic-area license.

It is thus irrefutable that SCRRA's provision of PTC is in the public interest, *and* that in order to do so, it must use AMTS spectrum.

The Petition complains that the waivers sought by SCRRA are in effect a petition for rulemaking. Havens mischaracterizes the SCRRA Waiver Request: it is in fact narrowly tailored for SCRRA's unique and specific circumstances.[13] SCRRA does not seek a revision to the AMTS rules

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[10] *See, Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules,* Memorandum Opinion and Order, 24 FCC Rcd 8537 (2009) at para. 13 ("*PTC-220 Waiver Order*").

[11] PTC-220, LLC is the licensee for a number of nationwide and regional licenses in the 220 MHz band, to be used for PTC operations.

[12] *See also,* Comments of PTC-220, LLC filed in this proceeding on April 28, 2010, at page 2.

[13] *See, e.g.,* Waiver Request at pages 4-5 ("The unique factual circumstances faced by SCRRA justify the limited rule waivers sought herein …."). In addition to generally mischaracterizing the Waiver Request, the Petition (at page 35) also mistakenly asserts that SCRRA requested a waiver to allow use of base station equipment certified under Part 90 of the rules. SCRRA requested no such waiver. Havens may have made this mistake because while the provisions of Section 80.123(d) of the Commission's rules address equipment authorization, that same sub-section also states that "equipment must only operate on the public correspondence channels …." It is this latter requirement regarding operation on public correspondence channels (not the requirement regarding equipment authorization), for which SCRRA sought a waiver of Section 80.123(d). *See,* Waiver Request at note 16.

generally, but rather only a waiver limited to operations under its geographically limited license. Indeed, the Commission has specifically anticipated that circumstances could arise justifying the waiver of AMTS rules, in particular, to facilitate use of AMTS spectrum for land mobile radio operations.[14]

The Petition's last generalized argument against the Waiver Request is that grant of the waivers would be inconsistent with spectrum efficiency, since coverage of SCRRA's rail corridors allegedly would not justifying leaving "vast areas of Southern California" unserved by AMTS. Petition at page 33. This argument contradicts Commission precedent, and is otherwise invalid.

First, as discussed in the Waiver Request, grant of the waivers will in fact advance the Commission's spectrum efficiency and flexible use goals, by encouraging intensive use of the AMTS spectrum. When it afforded AMTS licensees additional operational flexibility to provide service to units on land in 2007, the Commission stated that its actions would "facilitate more efficient use of VPC and AMTS spectrum; and provide an additional means to meet growing demand for spectrum by PLMR licensees and end users, including public safety and critical infrastructure industry (CII) entities."[15] SCRRA's proposals are completely consistent with that approach. Indeed, the Bureau has previously granted similar waiver requests to allow an electric utility to use

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[14] *MariTEL, Inc. and 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*, Report and Order, 22 FCC Rcd 8971 (2007), at para. 26 ("*AMTS Flexibility Order*").

[15] *Id.* at para. 1. It should be noted that the definition of "Critical Infrastructure Industry" in Section 90.7 of the Commission's rules includes "railroads" and "metropolitan transit systems". SCRRA clearly fits into this definition.

AMTS spectrum on a PMRS basis, and in doing so found that "permitting the use of the subject frequencies for PLMR operations will promote the efficient use of AMTS spectrum…."[16]

Second, it is particularly ironic for Havens to assert that use of the spectrum for coverage of rail corridors is inefficient, since maritime use of AMTS licenses can at best only occur in narrow strips along the coast of oceans and a few navigable rivers and lakes. Nevertheless, the Commission has authorized broad geographic area AMTS licenses that include very large areas that do not include navigable waters, and thus are not covered in connection with the provision of maritime service. In contrast, SCRRA's proposed operations will include significant use of AMTS frequencies not only on and near the Pacific coast, but also inland in rail corridor areas that would not be covered in connection with the provision of a maritime service.[17]

In sum, Havens' general scattershot arguments regarding PTC and spectrum efficiency simply do not rise to the level of "specific allegations of fact" sufficient to show that grant of the applications and the waivers therein would not be in the public interest. To the contrary, it is irrefutable 1) that SCRRA's provision of PTC would be in the public interest, 2) that in order to do so it must use AMTS spectrum, and 3) that such use of AMTS spectrum will require the grant of waivers. As a necessary step in facilitating the uncontested public interest in the provision of PTC, the grant of waivers thus itself serves the public interest.

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[16] *In the Matter of Application of AMTS Consortium, LLC,* Order, 20 FCC Rcd 17975 (WTB 2005) ("*AMTSC Initial Order*") at para. 10; *recon. denied,* 22 FCC Rcd 1597 (WTB 2007); *app. for review denied, In the Matter of Application of AMTS Consortium, LLC,* Memorandum Opinion and Order, 25 FCC Rcd 526 (2010).

[17] If the Bureau believes that the issue of use of this AMTS spectrum only in the geographic areas of rail corridors is worthy of consideration in this proceeding (and SCRRA does not), then the Bureau should consider the additional area on either side of the corridors necessary to protect AMTS operations from interference as area in "use." SCRRA's analysis indicates that a separation distance between co-channel stations of 130 - 150 miles is required to avoid harming PTC operations. Accordingly, SCRRA generally must provide that much separation between its co-channel stations to prevent them from interfering with one another. This compares favorably with the 150-mile separation distance in Section 80.70 of the rules. When this additional protection area is added into the evaluation, then the net result is coverage or use of nearly the entire proposed partitioned service area.

III. Havens' Attacks on Specific Waiver Requests are Also Irreparably Flawed.

In Section II, it was shown that Havens' more general attacks on the SCRRA waiver requests are irreparably flawed and fail to raise a substantial and material question of fact as to the public interest in granting the applications and waivers. In this Section, we show that the same is true in regards to the Petition's equally flawed attacks on particular SCRRA waiver requests.

At page 34, the Petition asserts that the provisions of Sections 80.123(b) and (g) giving priority to maritime communications "cannot be waived," citing to the *AMTS Flexibility Order* at paras. 13-17.[18] Havens flatly misreads or misstates that *Order*. It is true that the Commission declined therein to revise the rules to eliminate that priority requirement generally for all licensees. But, the *Order* also clearly provided for individual parties to seek a waiver of those rules, so that the impact on maritime service and other factors could be evaluated on a case-by-case basis. *Order* at paras. 17, 20-21, and notes 49 and 90.[19] In the present case, SCRRA has not sought a revision to the rules, but rather a waiver. It made an extensive showing that grant of the waivers would not harm maritime users in Southern California, since there are so many other licensees providing maritime service in that area. Waiver Request at pages 9-12. Further, the Waiver Request stated (at note 23) that the representative for the U.S. Coast Guard has informed SCRRA that the USCG does not object to the grant of the requested waivers. The Waiver Request also demonstrated (at page 8) that PTC service must be operated on an exclusive-use, private land mobile basis, and could not possibly provide service to maritime traffic, since transmissions from other users would create interference to the PTC system, which could cause significant disruption of

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[18] *AMTS Flexibility Order, supra* note 14, 22 FCC Rcd at pages 8979-8982.

[19] Indeed, the Commission has already granted waivers of the maritime priority requirements of Section 80.123. *See, e.g., AMTSC Initial Order, supra* note 16, at para. 10.

service. The Petition fails to address any of this showing, and accordingly, fails to raise a substantial and material question of fact as to the public interest in waiving Sections 80.123(b) and (g).[20]

The Petition also briefly addresses (at page 35) the SCRRA request for waiver of Section 80.385(a)(2) of the Commission's rules. The Petition merely references arguments Havens has made in a different proceeding, involving the Big River Electric Corporation. As Havens has made no attempt to directly apply any arguments to the facts of the present proceeding, SCRRA asserts that the Petition fails on its face to raise a substantial and material question of fact as to whether waiver of Section 80.385(a)(2) is this proceeding in the public interest. Nevertheless, SCRRA will herein address what it believes to be the concerns of Mr. Havens.

Section 80.385(a)(2) of the Commission's rules provides that "coast" (base) stations are only allowed to transmit on the lower half of the AMTS A-block (217.5-218 MHz) and "ship" stations (mobiles) only on the upper half (219.5-220 MHz). However, as discussed at page 9 of the Waiver Request, since PTC will use TDM communications for transmit/receive separation (as well as for multiple access), it is absolutely necessary to allow all 3 types of PTC nodes (mobiles, base, and wayside) to transmit on both frequency sub-blocks. Thus, in light of the unique circumstances in this case, denial of the waiver of this rule would be contrary to the public interest in fulfilling SCRRA's federal mandate to provide PTC. The Waiver Request further noted that the Commission has

[20] Similarly, at page 37 of the Petition, Havens opposes the waiver of Section 80.475(c) with essentially a one sentence argument: "Section 80.475(c) is appropriate because SCRRA should be required to follow the rules and provide priority to maritime and provide services in emergency and distress situations in maritime." This sentence is empty of substance (in essence asserting that the waiver should be denied because the rule should be followed), and fails to raise a substantial and material question of fact as to the public interest in waiving Section 80.475(c). In response, though, SCRRA notes that for the very same reasons that it would be impossible to provide PTC service while complying with Sections 80.123(b) and (g), it would also be impossible to do so and comply with the requirements of Section 80.475(c). *See* Waiver Request at pages 5-7 and note 15.

recently granted a request to waive similar Part 90 base/mobile configuration requirements in order to facilitate the provision of PTC.[21]

From review of Havens filings in the BREC proceeding, it appears that his concerns regarding waiver of Section 80.385(a)(2) are that it would result in impermissible out-of-band interference to his adjacent B-Band operations. We note first that this concern is speculative, in light of the facts that: 1) SCRRA has not constructed any AMTS facilities as of this time and 2) we are aware of no evidence that Havens has constructed any AMTS facilities in the Southern California or Mountain regions, or even has a plan for such construction. Thus, in the absence of actual facts regarding 1) the locations and heights of SCRRA's and Havens' base stations, and 2) the locations of SCRRA's and Havens' mobile stations and the typical duration of their intermittent communications, the actual likelihood of interference cannot be evaluated, and accordingly, cannot form a substantial and material question of fact regarding the public interest in waiver of this rule. Nevertheless, even on a theoretical basis, Havens' concerns are unfounded here.

SCRRA's engineering analysis shows that interference resulting from the requested waiver of Section 80.385 could, at worst, only occur to those AMTS B-Block frequencies directly adjacent to the AMTS A-Block frequencies (first-adjacent frequencies). Of the entire 1 MHz total AMTS B-Block spectrum, only 50 - 75 KHz, which correspond to two 25 KHz channels centered at 217.4875 MHz and 219.4875 MHz and possibly one at 219.4625 MHz, could potentially be affected. SCRRA is well aware of its obligations under Section 80.211(f) of the Commission's rules to limit out-of-band emissions, and it affirmatively states herein that its operations pursuant to the Waiver Request will comply with those obligations. While SCRRA cannot provide or commit to specific techniques at this time prior to the construction of facilities, compliance with out-of-band limits can and will be fulfilled

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[21] *PTC-220 Waiver Order, supra* note 10, at para. 18. *See also, Application for Consent to the Assignment of a Five-Channel 220 MHz Nationwide License to the Association of American Railroads*, Order, 18 FCC Rcd 24711 (2003) at para. 9.

through a combination of control of specific frequencies used, control of transmit power and antenna heights for facilities using the frequencies closest to the B-Block spectrum, and/or through use of filtering.[22]

Thus, the Petition's brief reference to Section 80.385(a)(2) provides no basis for denying a waiver of that rule, because: 1) the Petition's incorporation by reference of arguments in another proceeding is inadequate for failure to specifically address the facts in this proceeding, 2) the apparent concerns regarding interference are purely speculative and cannot be evaluated in light of the lack of currently constructed facilities in either the A or the B-Blocks, 3) even on a theoretical basis, the interference concerns appear to be very limited in a worst case scenario and can be addressed in numerous ways by SCRRA under operations pursuant to the requested waivers, and 4) SCRRA is well aware of its obligations under Section 80.211(f) of the Commission's rules to limit out-of-band emissions, and it affirmatively states herein that its operations pursuant to the Waiver Request will comply with those obligations.[23]

Lastly, the Petition states (at page 35), in a mere two sentences, that waivers of Sections 80.123(e) and 80.215(h)(5)(i) of the rules should not be granted because the result would be "a less spectrum efficient system" than Havens apparently believes is appropriate. These vague and unsupported assertions provide no substance to address, and thus provide no basis for denial of

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[22] The flexibility to utilize various remedies is found in part in Section 80.481 of the Commission's rules, which provides that AMTS transmitters may utilize any modulation or channelization scheme, so long as emissions are attenuated in accordance with Section 80.211 at frequency band edges.

[23] At pages 37-38, the Petition also opposes SCRRA's request for waiver of Section 80.479(c) of the Commission's rules, which requires consent of all "affected" licensees prior to using mobile-to-mobile communications. While it was noted in the Waiver Request that there are no mobile-to-mobile communications in the V/EMTS PTC systems, waiver of this rule was requested out of an abundance of caution, since SCRRA proposes to transmit to mobile stations, from fixed stations that will be using channels allocated under Section 80.385 to mobile. SCRRA believes that Havens' concerns regarding this rule are largely the same as those regarding Section 80.385, and accordingly SCRRA's response is the same as that set forth above regarding Section 80.385. However, if the Bureau believes that waiver of Section 80.479(c) is unnecessary once waiver is granted for Section 80.385, then SCRRA withdraws the request for waiver of Section 80.479(c).

the requested waivers. Nevertheless, in light of the fact that Havens appears to be expressing concerns about interference here, we note that "spectrum efficiency" can be measured by how much interference occurs amongst a pool of users, operating in the same "frequency band" and sharing the same geographic region. In this particular case the issue is moot since, in regards to co-channel interference, if the Commission grants the applications at issue here, SCRRA will be the only authorized AMTS operator on the A-Block frequencies in its six-county geographic area. Further, in regards to A-Block operators outside of the six-county geographic area, SCRRA has not sought a waiver of Section 80.479(b) of the Commission's rules, and it affirmatively asserts here that it can and will take all steps necessary to insure that its operations pursuant to the requested waivers will comply with the 38 dBu field strength border limits provided for in that rule section. Similarly, in regards to out-of-band emissions into adjacent channels, as discussed above, SCRRA affirmatively asserts here that it will take all steps necessary to insure that its operations pursuant to the requested waivers will comply with the limits set forth in Sections 80.211(f) of the rules.

In sum, the Petition's arguments against specific SCRRA waiver requests do not stand up to scrutiny. Havens' interference concerns are speculative, in addition to being vague and unsupported. In any case, SCRRA will comply with the requirements of Sections 80.479(b) and 80.211(f) regarding in-band and out-of-band emission limits.

IV. SCRRA's Section 20.9 Certification Is Accurate, Proper, and Necessary for the Provision of PTC.

The Petition suggests that the Section 20.9 Certification filed by SCRRA in connection with the applications should be "dismissed or denied," based on "MCLM's own petitions to deny against certain of Petitioners' Section 20.9(b) modification applications…." Petition at page 38. SCRRA will leave it to MCLM to address Havens' arguments regarding MCLM's pleadings in other

proceedings. It is irrefutable in this proceeding, however, that SCRRA's Section 20.9 Certification is not only accurate and proper, it is clearly necessary for SCRRA to provide PTC service.

In the Certification, SCRRA noted that it has no authority to operate a for-profit commercial mobile radio service ("CMRS"), does not currently provide a CMRS, and does not intend to provide CMRS or public coast service using the AMTS spectrum. Instead, SCRRA will use this spectrum solely to operate a PTC system on a private, internal basis. SCRRA could not possibly provide CMRS or other service to maritime traffic, while using this spectrum for PTC. PTC is designed to and must be operated solely on an exclusive use, private internal basis. Transmissions to outside users would serve no purpose, and transmissions from outside users would create interference to the PTC system, which could cause significant problems. At very least, such interference from outside users could result in unplanned and repeated stops to PTC-equipped trains, as the PTC system interprets the lack of its own signal reception as a lack of movement authority. For similar reasons, PTC will not be interconnected with the public switched telephone network. Accordingly, SCRRA demonstrated that its PTC service cannot and will not meet the definition of CMRS because 1) PTC transmissions will not be available to the public or to classes of the public, 2) PTC transmissions will not be interconnected, and 3) the PTC radio transmission service will not be provided for profit. *See* Section 20.3 of the Commission's rules.

None of the above was contested in the Petition. SCRRA's Certification stands on its own, and should be evaluated on its own. In light of the fact that none of its elements were contested or could be contested, the Certification should be accepted by the Bureau.

V. Conclusion

The Petition fails to raise the required substantial and material question of fact as to whether the grant of the above-captioned applications, including the Waiver Request, would serve the public

interest.[24] Accordingly, the Petition itself should be denied and the above-captioned applications granted in a timely manner, in order to allow SCRRA to rapidly introduce federally mandated PTC technology in its operations.

Respectfully submitted,

SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY

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May 10, 2010

[24] SCRRA hesitates to dignify with a response, Havens' patently absurd and scurrilous attacks on SCRRA (*i.e.*, Petition at pages 23-24 and 27, suggesting that SCRRA "aided and abetted" MCLM in some sort of fraud, was an "accessory after the fact," or is engaged in "laundering stolen goods."). SCRRA will state only that while it is well aware of Mr. Havens' obsessively repetitive and wildly speculative attacks on MCLM, all SCRRA has done here is enter into an agreement with MCLM to purchase spectrum that is in fact currently licensed to MCLM, with a purchase agreement that contains representations and warranties by MCLM that it properly holds the subject FCC license. The purchase is subject to the prior approval of the FCC, which (unlike Mr. Havens) is in the best position to evaluate the bona fides of MCLM's status as the proper holder of the subject license.

DECLARATION OF DARRELL MAXEY

I, Darrell Maxey, Director of Engineering and Construction for Southern California Regional Rail Authority, hereby declare, under penalty of perjury, that I have reviewed the Opposition to Petition to Deny to which this Declaration is attached, and the facts contained therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2010.

Darrell V. Maxey

Darrell Maxey

CERTIFICATE OF SERVICE

I, Joan P. George, an assistant in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the *Opposition to Petition to Deny* was sent this 10th day of May, 2010, via email where indicated, and via United States First Class Mail, postage prepaid, to the following:

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