

May 9, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: EB Docket No. 11-71

Dear Ms. Dortch:

PTC-220, LLC (“PTC-220”)¹ is encouraged by the Commission’s willingness to consider extricating the long-pending spectrum assignment application of the Southern California Regional Rail Authority (“Metrolink”)² from the ongoing enforcement proceeding involving Maritime Communications/Land Mobile, LLC (“Maritime”), as indicated in the April 19, 2011 *Hearing Designation Order* issued in the above-referenced docket.³ Metrolink’s application to partition spectrum in six California counties from Maritime’s license, call sign WQGF318, has been pending for more than a year. PTC-220 has twice made filings asking the Commission to grant the Metrolink application, explaining that the spectrum is needed for the deployment of Positive Train Control (“PTC”) in the greater Los Angeles area.⁴ PTC-220 is writing now to re-emphasize the urgent need for this spectrum and to urge the Commission to remove the Metrolink application from the ambit of the *Hearing Designation Order* as soon as possible.

As the Federal Railroad Administration (“FRA”) previously informed the Commission, the Los Angeles Basin is an area of high density rail traffic, which is expected to require more

¹ PTC-220 was formed to oversee the development and deployment of Positive Train Control systems throughout the country. PTC-220 is owned by its four member railroads, Burlington Northern Santa Fe Corporation, CSX Corporation, Norfolk Southern Corporation, and Union Pacific Corporation.

² See ULS File No. 0004144435.

³ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, FCC 11-64 (rel. April 19, 2011) at n.7 (“*Hearing Designation Order*”).

⁴ See Comments of PTC-220, LLC, WT Docket No. 10-83 (Apr. 28, 2010); Letter from Ed Kemp, President, PTC-220, LLC to Marlene Dortch, Secretary, FCC, WT Docket No. 10-83 (Oct. 29, 2010) (“October Letter”).

spectrum than PTC-220's current license holdings in order to provide robust PTC coverage for both freight and commuter traffic.⁵ PTC-220 concurs with the FRA's assessment that PTC-220's own licenses will be inadequate to support permanent, ongoing PTC operations for all rail traffic in the Los Angeles area, and PTC-220 has urged Metrolink to obtain additional, compatible spectrum that can be pooled with PTC-220's existing spectrum.

The Los Angeles Basin is also an area of high priority for the early deployment of PTC. In 2008, two PTC-220 member railroads, Burlington Northern Santa Fe Corporation and Union Pacific Corporation, publicly announced a goal of initiating PTC in this area by December 31, 2012, three years prior to the statutory deadline. All parties remain committed to this early deployment date – less than 20 months away – and preparations are actively underway. As PTC-220 recently reported in its Construction Progress Report,⁶ a consolidated RF performance prediction model has already been developed which includes all of the planned PTC radios for both commuter and freight railroads in the area.⁷ The collaboration between PTC-220 and Metrolink is a pioneering effort to determine the best methods to organize the sharing of PTC communications infrastructure in a multi-railroad, dense traffic area. Indeed, the FRA has awarded a grant to Metrolink to be used in part for reporting on the lessons learned during the development of the PTC system for the Los Angeles Basin, so that future deployments in other high traffic areas can be informed by this experience.

Given the compelling public interest considerations at stake, the Commission should grant the Metrolink application and should make it clear that its partitioned license will remain valid notwithstanding any possible future revocation of Maritime's licenses. As PTC-220 explained in its October Letter, the spectrum in the six counties at issue represents just a small portion of the total spectrum Maritime obtained in Auction 61.⁸ Even after grant of the Metrolink application, the Commission will retain the ability to impose adequate sanctions against Maritime, including the ability to impose a monetary forfeiture of up to \$1.5 million for the violation of each Commission rule.⁹ Moreover, the Commission also has the option of

⁵ See Letter from Joseph Szabo, Administrator, FRA, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, WT Docket No. 10-83 (Apr. 16, 2010) at 2 (“[PTC-220’s] spectrum is insufficient to support ... these freight railroads’ operations as well as SCRRA passenger/commuter operations. Consequently, it is necessary for SCRRA to purchase additional spectrum access rights.”); see also Letter from Clifford Eby, Acting Administrator, FRA, to Marlene Dortch, Secretary, FCC, filed in WT Docket No. 08-256 (Dec. 15, 2008) at 2.

⁶ PTC-220, LLC, Construction Progress Report, filed in WT Docket No. 08-256 (May 2, 2011) at 4-5.

⁷ The Construction Progress Report also reported on plans for the reciprocal leasing of spectrum of between Metrolink and PTC-220. See *id.* at 5.

⁸ See October Letter at 2-3.

⁹ See 47 C.F.R. § 1.80(b)(2).

conditioning the grant of the application on a disgorgement of any profits from the transaction should Maritime's remaining licenses ultimately be revoked.¹⁰

Respectfully Submitted,

/s/ Edwin F. Kemp

Edwin F. Kemp
President
PTC-220, LLC
1400 Douglas Street, STOP 0640
Omaha, NE 68179
(402) 544-4883

¹⁰ The Commission has previously used disgorgement where a party has received income that it would not otherwise have received had it not violated a Commission rule. *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, First Order on Reconsideration, 15 FCC Rcd 8158 (2000) at ¶ 17; *American Telephone and Telegraph Company*, Memorandum Opinion and Order, 8 FCC Rcd 3546 (1993) at ¶ 30 (noting that “the court in *AT&T v. FCC* explicitly acknowledged this Commission's authority to order a carrier to disgorge earnings in excess of a rate of return prescription ...”).

CERTIFICATE OF SERVICE

I, Betty Porter, hereby certify that on this 9th day of May, 2011, I caused to be mailed a true copy of the foregoing letter by first-class U.S. mail, postage prepaid, to the following:

Patricia J. Paoletta, Esq.
Wiltshire & Grannis LLP
1200 18th Street, N.W., Suite 1200
Washington, DC 20036
Counsel for Maritime Communications/Land Mobile, LLC

Kurt E. DeSoto, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington DC 20006
Counsel for Wisconsin Power and Light Company

EnCana Oil and Gas (USA), Inc.
ATTN: Dean Purcelli
1400 North Dallas Parkway, Suite 1000
Dallas, TX 75240

Dixie Electric Membership Corporation, Inc.
ATTN: John D. Vranic
16262 Wax Road
Greenwell Springs, LA 70739

Duquesne Light Company
ATTN: Lee Pillar
2839 New Beaver Avenue
Pittsburgh, PA 15233

Atlas Pipeline – Mid Continent LLC
ATTN: James Stepp
110 W 7th Street, Suite 2300
Tulsa, OK 74119

DCP Midstream LP
ATTN: Mark Standberry
6175 Highland Avenue
Beaumont, TX 77705

Mona Lee & Associates
ATTN: Mona Lee
3730 Kirby Drive, Suite 1200, PMB 165
Houston, TX 77098
Contact for Atlas Pipeline – Mid Continent LLC

Jackson County Rural Membership Electric Cooperative
ATTN: Brad Pritchett
272 E. Base Road
Brownstown, IN 47220

Denton County Electric Cooperative, Inc.
dba CoServe Electric
ATTN: Chris Anderson, Project Mgr. – IS
7701 S. Stemmons
Corinth, TX 76210-1842

Puget Sound Energy, Inc.
ATTN: Rudy Wolf
P.O. Box 97034
10885 NE 4th Street
Bellevue, WA 98009-9734

Fletcher Heald & Hildreth, PLC
ATTN: Paul J. Feldman
1300 N. 17th Street, 11th Floor
Arlington, VA 22209
Counsel for Southern California Regional Rail Authority

Enbridge Energy Company, Inc.
ATTN: Telecom
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Gardere Wynne Sewell LLP
Robert J. Miller
1601 Elm Street, Suite 2800
Dallas, TX 75201
Counsel for Denton County Electric Cooperative, Inc.
dba CoServe Electric

Kurt E. DeSoto, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Interstate Power and Light Company

Skybridge Spectrum Foundation
2509 Stuart Street
Berkeley, CA 94705

Southern California Regional Rail Authority
ATTN: Darrel Maxey
700 S. Flower Street, Suite 2600
Los Angeles, CA 90017

Verde Systems LLC
2509 Stuart Street
Berkeley, CA 94705

Warren Havens
2509 Stuart Street
Berkeley, CA 94705

Environmental, LLC
2509 Stuart Street
Berkeley, CA 94705

Intelligent Transportation and Monitoring Wireless LLC
2509 Stuart Street
Berkeley, CA 94705

Telesaurus Holdings GB LLC
2509 Stuart Street
Berkeley, CA 94705

V2G LLC
2509 Stuart Street
Berkeley, CA 94705

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Room 7-C723
Washington, DC 20554

/s / Betty Porter

Betty Porter