

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

 ORIGINAL

EB 11-71

In re Applications of )  
)  
MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC, *Assignor*, )  
)  
and )  
)  
SOUTHERN CALIFORNIA REGIONAL RAIL )  
AUTHORITY, *Assignee* )  
)  
For change in regulatory status of a geographically )  
partitioned portion of the license area of )  
Station WQGF318, assignment of partitioned portion )  
and related waiver requests )

File Nos. 0004153701  
and 0004144435

FILED/ACCEPTED

MAY - 9 2011

Federal Communications Commission  
Office of the Secretary

TO: Marlene H. Dortch, Secretary  
For transmission to the Commission

SHOWING PURSUANT TO FOOTNOTE 7

Robert M. Gurs  
Paul J. Feldman  
Harry F. Cole  
Christine Goepp

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street -11th Floor  
Arlington, Virginia 22209  
703-812-0400

*Counsel for Southern California  
Regional Rail Authority*

May 9, 2011

No. of Copies rec'd 0413  
List ABCDE

**TABLE OF CONTENTS**

Summary ..... iii

Background .....2

Discussion .....8

    Technical Waivers ..... 10

*Jefferson Radio Policy* .....12

    Procedural Waivers/Removal and Grant .....14

Conclusion .....19

## SUMMARY

Pursuant to Footnote 7 of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (“HDO”), FCC 11-64 (referred to as the “MC/LM Hearing”), released April 19, 2011, Southern California Regional Rail Authority (“SCRRA”) hereby shows that the public interest would best be served if the Commission were to: (a) “remove from the ambit” of the MC/LM Hearing the above-captioned applications and related waiver requests; and (b) promptly grant those applications and all of the related waiver requests.

SCRRA is subject to a statutory mandate to implement Positive Train Control (“PTC”) technology no later than 2015 – and SCRRA has committed to Senators Feinstein and Boxer, and to the people of Southern California, that it will use its best efforts to implement PTC by December 31, 2012. Through the above-captioned application, SCRRA is seeking to obtain spectrum necessary for that implementation. In Footnote 7 to the HDO, the Commission has demonstrated its awareness of, and sensitivity to, the important public safety concerns underlying the Rail Safety Improvement Act of 2008 (“RSIA”). As set forth herein, the public interest plainly dictates that the SCRRA assignment application (and related matters) be removed from the MC/LM Hearing immediately and granted promptly, by the full Commission.

No governmental interest is more important than public safety. In the RSIA, Congress has with unmistakable and unequivocal clarity assigned public safety in rail transportation the highest priority. Nothing in the Communications Act is inconsistent with the mandate of the RSIA. To the contrary, Section 1 of the Communications Act expressly lists “promoting safety of life and property through the use of wire and radio communications” as one of the Commission’s fundamental purposes”. In other words, the Commission’s own statutory mandate

plainly supports the requested relief, which is intended to permit SCRRA to meet its own statutorily-imposed duty to implement PTC in the public interest.

Removal of the SCRRA application from the MC/LM Hearing and prompt grant of that application (and the related matters described herein) would be consistent with all Commission rules, policies and precedent. By contrast, failure to take those actions would threaten SCRRA's ability to implement PTC as required by Congress, and would thereby threaten the safety of the people of Southern California – a result which would harm, rather than advance, the public interest.

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

In re Applications of )  
)  
MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC, *Assignor*, )  
)  
and ) File Nos. 0004153701  
) and 0004144435  
)  
SOUTHERN CALIFORNIA REGIONAL RAIL )  
AUTHORITY, *Assignee* )  
)  
For change in regulatory status of a geographically )  
partitioned portion of the license area of )  
Station WQGF318, assignment of partitioned portion )  
and related waiver requests )

TO: Marlene H. Dortch, Secretary  
For transmission to the Commission <sup>1</sup>

**SHOWING PURSUANT TO FOOTNOTE 7**

1. Pursuant to Footnote 7 of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (“HDO”), FCC 11-64, released April 19, 2011, Southern California Regional Rail Authority (“SCRRA”) hereby shows that the public interest would best be served if the Commission were to: (a) “remove from the ambit” of the MC/LM Hearing the

---

<sup>1</sup> SCRRA is submitting this Showing directly to the Commission below a caption reflecting only the SCRRA-MC/LM assignment and modification applications and related waiver requests, rather than as a pleading addressed to the Presiding Administrative Law Judge in EB Docket No. 11-71 (“the MC/LM Hearing”). In Footnote 7 to the HDO, the Commission (through the use of

above-captioned applications and related waiver requests; and (b) promptly grant those applications and all of the related waiver requests. Despite its best efforts to act promptly and effectively to maximize public safety, SCRRA has instead found itself an unwitting and unwilling captive to the much-delayed processing of these applications, and the subsequent issuance of the HDO. These delays, and the HDO, are not attributable to SCRRA or its proposed use of the spectrum; rather, they arise solely from concerns regarding MC/LM. Properly recognizing SCRRA's lack of culpability here, and understanding that "safety of life considerations" are at risk, the Commission has invited a showing as to why the SCRRA applications should, in the public interest, be removed from the hearing and acted on separately. Pursuant to that invitation, SCRRA urges the Commission to take prompt action – ideally no later than June 15, 2011, the currently scheduled date of the prehearing conference in the MC/LM Hearing – to facilitate SCRRA's compliance with the Congressional mandate to deploy Positive Train Control ("PTC").

## **BACKGROUND**

2. Formed in 1991, the SCRRA is a Joint Powers Authority, consisting of five county transportation planning agencies: the Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, the Riverside County Transportation Commission, the San Bernardino Associated Governments and the Ventura County Transportation Commission. In its 17th year of operation, SCRRA's Metrolink commuter rail service provides the people of Southern California a safe, reliable and environmentally friendly commuting option. Currently, SCRRA 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 operates 149 daily trains.

3. 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, reliable and efficient rail operations. Congress recognized this when it enacted the Rail Safety Improvement Act of 2008 (the “RSIA”), which *mandates* the development and implementation of positive train control (“PTC”) on “Class I” and commuter railroads by December 31, 2015.<sup>2</sup> PTC systems are communications intensive and require radio spectrum to enhance public safety by monitoring train movements to prevent train-to-train collisions, over-speed accidents, and unauthorized incursions into work zones. In these PTC systems, radio devices located onboard a train transmit and receive data to and from radio devices installed at signals, base stations, and other locations within or near the railroad corridor. This data is then transmitted to a centralized network operations center via a communication backhaul system. Information is transmitted regarding that train's location and related route characteristics, along with additional information regarding where the train may travel safely. The integrated onboard system then automatically monitors the train’s speed and location with respect to the train’s area authorized for travel, also known as “authority.” Positive train control systems will manage track congestion and improve safety, in part by supervising and enforcing “movement authorities” and speed limits. An audible alarm and visual warning on a display screen will be provided to the locomotive engineer in advance of an approaching unsafe condition such as red signals or a speed reduction at a curve, and if the warning is not heeded, PTC will automatically brake the train thereby avoiding a potentially unsafe condition. The PTC System will also continuously monitor and report train diagnostics and

---

<sup>2</sup> See Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (2008), at Section 104.

issue alarms for other potentially unsafe conditions, for example, broken rails and incorrect switch alignments.<sup>3</sup>

4. In enacting the RSIA, Congress specifically chose to expedite the implementation of PTC. While noting that regulators, vendors and rail carriers had been working on the development of PTC for over 20 years, the Senate Report for the RSIA stated that “the deployment of PTC systems has not been as rapid or as widespread as it could be.”<sup>4</sup> While the RSIA legislation was being considered, on September 12, 2008, a train to train collision involving Metrolink and Union Pacific trains occurred in Chatsworth, California, in which 25 people died, and 130 more were injured. Four days after this tragic event, California Senators Diane Feinstein and Barbara Boxer introduced the Rail Collision Prevention Act (S.3943, the “RCPA”), which provided mandatory PTC implementation dates four to six years earlier than the 2018 date provided for in the then-pending draft of the RSIA. In floor debate on the RSIA, Senator Feinstein noted that PTC had faced “years of delay,” and that legislation mandating it “is necessary and long overdue.”<sup>5</sup> “We need action now,” Senator Feinstein demanded.<sup>6</sup> The RSIA was enacted shortly thereafter, on October 16, 2008, with a revised, mandatory PTC implementation date of 2015 and a requirement that railroads submit their PTC implementation to the Federal Rail Administration (“FRA”) in April, 2010.

5. SCRRRA recognized the need to implement public interest benefits of PTC as quickly as possible, notwithstanding the 2015 deadline provided for in the RSIA. Following up on the

---

<sup>3</sup> See, e.g., Federal Railroad Administration, Positive Train Control (PTC), <http://www.fra.dot.gov/us/content/784> (last visited May 1, 2011).

<sup>4</sup> S. Rep. No. 110-270 at 6 (2008). While the two-decade period of research and development has been longer than many would like, it has afforded the industry the ability to upgrade subsequent generations of PTC technology so that systems available now to the industry are state-of-the-art and ready for deployment.

<sup>5</sup> 154 Cong. Rec. S10035 (daily ed. Sept. 29, 2008).

<sup>6</sup> *Id.* at S10036.

mandate proposed in the RCPA that PTC be implemented in areas of “high risk” by 2012,<sup>7</sup> SCRRA committed to Senators Feinstein and Boxer, and to the people of Southern California, that it would use its best efforts to implement PTC by December 31, 2012. Additionally both Los Angeles Region Class 1 freight carriers, BNSF and UPRR, have made the same commitments. SCRRA is currently on track with that schedule, assuming timely availability of the required radio spectrum. Beginning early in 2009, SCRRA assembled a multi-disciplinary team of staff and engineering consultants to develop and then deliver the PTC System on an intense, focused, accelerated basis. A significant milestone was reached in October, 2010 when SCRRA awarded a major contract to Parsons Transportation Group (PTG) as its Vendor/Integrator for PTC. The combined PTG, SCRRA delivery team is currently fully ramped up to nearly 100 full time engineering, technical and project delivery support specialists.

6. The federal mandate to implement PTC includes a requirement that a carrier’s PTC system be interoperable with other railroad carriers that operate on the same tracks.<sup>8</sup> In order for SCRRA to achieve that interoperability, it must use spectrum that facilitates shared operations with the other major rail operators in Southern California – Union Pacific and BNSF – with whom Metrolink shares tracks. Access to spectrum *this year* is critical to permit testing for interoperability in deploying next year. The recent capture of Al Qaeda files in Osama Bin Laden’s compound shows that U.S. rails were under even more of a threat.<sup>9</sup> Both Union Pacific and BNSF will be using 220 MHz band

---

<sup>7</sup> *Id.* at S10035 (Statement of Sen. Boxer).

<sup>8</sup> *See* 49 U.S.C. Section 20157(a)(2). *See also*, 49 C.F.R. Section 236.1011(a)(3).

<sup>9</sup> *E.g.*, “Evidence collected from Osama bin Laden's compound in Pakistan indicates that Al Qaeda considered launching a terrorist strike against America's rail system, U.S. officials said Thursday, though there was no sign of concrete plans to carry out an attack.”

[http://www.latimes.com/news/nationworld/nation/la-na-bin-laden-rail-threat-](http://www.latimes.com/news/nationworld/nation/la-na-bin-laden-rail-threat-20110506,0,2138503.story)

20110506,0,2138503.story. PTC provides significantly greater ability to stop trains more quickly than is presently the case, using radio signals. Such capability will substantially enhance

*(Footnote continued on next page)*

spectrum for their PTC systems as part of a freight rail consortium, PTC-220, LLC.<sup>10</sup> However, PTC-220, LLC has informed SCRRRA that for permanent on-going operations its spectrum is insufficient to support freight railroad operations as well as SCRRRA passenger/commuter operations. It should be noted that in areas such as Los Angeles, there is an extensive, overlapping freight and passenger rail network with very dense freight and commuter rail train traffic criss-crossing the metropolitan area to service major port,<sup>11</sup> manufacturing and distribution facilities, as well as numerous commuter rail stations. Thus, PTC-220 will not have enough additional spectrum to also support a high-density commuter operation such as Metrolink. SCRRRA has therefore been forced to look elsewhere to obtain enough suitable spectrum in the working range of the 220 MHz band to implement an interoperable PTC system as required by law.

7. SCRRRA at an early date understood the criticality of radio spectrum to its ability to deploy an interoperable PTC system in a timely fashion. Beginning shortly after the passage of the

---

*(Footnote continued from preceding page)*

the effectiveness of rail inspections which can identify obstructions (including those placed by terrorists).

Similarly, the recent interest by the Commission in using communications technologies to promote rapid response to earthquakes should be noted. See *Public Notice*, FCC To Hold Forum On Earthquake Effects on Communications, released April 28, 2011; and *Remarks of FCC Chairman Julius Genachowski at Earthquake Communications Preparedness Forum*, May 3, 2011. One of the goals of SCRRRA's PTC program is to use the capabilities of PTC in connection with advance warning systems for earthquakes and other hazardous events. In that scenario, PTC could be used to stop trains quickly to minimize risk to passengers from an earthquake. As the Chairman stated in his speech regarding the recent earthquake in Japan, "[t]he [Japanese] broadband-based warning system also caused many energy plants, industrial facilities, and transportation services to shut down automatically, averting problems at these locations. High-speed trains automatically came to safe stops in response to earthquake alerts transmitted along the rail system."

<sup>10</sup> PTC-220, LLC is the licensee for a number of nationwide and regional licenses in the 220 MHz Band.

<sup>11</sup> The area is home to the two busiest ports in the nation, Los Angeles and Long Beach.

RSIA, SCRRA conducted extensive spectrum research and engaged engineers and other technical consultants to identify appropriate frequencies on which to deploy its PTC system. Unfortunately, there is no spectrum, near 220 MHz or elsewhere, specifically allocated for PTC. After extensive due diligence, SCRRA concluded that the only practical option sufficient to allow timely implementation of PTC was to purchase a partitioned portion of the existing A-Block AMTS geographic-area license held by MC/LM in Southern California. All other frequency bands lacked sufficient available capacity, posed interference concerns, created technical and operational problems, or otherwise were not readily available to SCRRA through reasonable means.

8. SCRRA recognized that pursuing AMTS spectrum for PTC use would require the Commission to grant waivers of certain AMTS rules. These rules generally require maritime communications with the public and power limits that are incompatible with PTC use. However, because the Commission currently has no rules for operation of PTC, any spectrum identified by SCRRA likely would require waiver requests. SCRRA recognized that the Commission had already provided specific guidance to applicants requesting waivers of the Commission's Part 80 rules to use AMTS spectrum for land mobile radio operations.<sup>12</sup> Further, the Commission had already granted similar waivers previously requested by PTC-220, LLC in connection with its acquisition of 220 MHz Band spectrum for PTC use.<sup>13</sup>

9. SCRRA also recognized that pursuing AMTS spectrum for PTC use would require the Commission to grant a modification of the license to allow operation as a Private Mobile Radio Service ("PMRS"), rather than as a Commercial Mobile Radio Service ("CMRS"). However, SCRRA

---

<sup>12</sup> *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*, 22 FCC Rcd 8971 at ¶ 26 (2007) ("MariTEL Order").

<sup>13</sup> *See Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules*, 24 FCC Rcd 8537 (2009).

could not possibly provide commercial service to maritime users, or other public users, 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 operational problems. Further, SCRRA recognized that Section 80.475(c) of the Commission's rules provides for PMRS use of AMTS spectrum.

10. Accordingly, in January, 2010, SCRRA entered into an agreement with MC/LM to purchase its AMTS spectrum in a partitioned area consisting of the entirety of Los Angeles, Orange, Riverside, San Bernardino, Ventura and San Diego Counties. An application seeking Commission consent to the assignment of that partitioned portion of Station WQGF318 was filed on March 11, 2010 (File No. 0004144435). Attached to that application was a request for waiver of certain rules necessary to allow SCRRA to use the spectrum for PTC. A related application to modify the proposed partitioned portion of the license to allow operation as a PMRS, rather than as a CMRS, was filed on March 8, 2010 (File No. 0004153701). The Commission issued a *Public Notice* on March 29, 2010, DA 10-556, WT Docket 10-83, soliciting and receiving public comments regarding the applications and requested waivers. Therefore, the record is complete and the matter is ripe for decision.

#### DISCUSSION

11. In light of the background described above and the factors discussed below, SCRRA hereby requests that the full Commission promptly act to:
- (a) remove SCRRA's applications from the MC/LM Hearing (*i.e.*, EB Docket No. 11-71), subject to the additional terms and conditions described below; and simultaneously (or at least promptly thereafter)
  - (b) grant those applications and all pending related waiver requests necessary to permit SCRRA to implement a PTC system at the earliest possible time so as not to threaten the December, 2012 project delivery schedule.

12. Additionally, if the Commission is unable to act as indicated above by June 15, 2011, the date of the prehearing conference in the MC/LM Hearing, SCRRA requests that the Commission stay the MC/LM Hearing insofar as the SCRRA-MC/LM assignment application is concerned. Since (as discussed below) the requested removal would be designed to remove both that application and SCRRA from the MC/LM Hearing, no purpose would be served in requiring SCRRA to appear and participate, or to include the SCRRA-MC/LM assignment application, in the MC/LM Hearing to any extent.

13. These actions are plainly warranted in view of the federal PTC mandate, the overriding public safety considerations at stake here and the well-established Federal transportation safety policies that will be advanced – with no detriment to any other Federal policies – by favorable action on SCRRA’s application and related waiver requests.

14. As a preliminary matter, it is important to emphasize that, as a Federal agency, the Commission must be alert to, and must accommodate, Federal policies arising from statutory regimes not directly involving the Commission itself. *See, e.g., N.Y. Shipping Association v. FMC*, 854 F.2d 1338, 1370 (D.C. Cir. 1988); *McLean Trucking Co. v. U.S.*, 321 U.S. 67, 80 (1944). Here, the RSIA – approved by Congress, signed into law by the President – reflects the Federal government’s unequivocal view that U.S. rail operators such as SCRRA must implement PTC systems expeditiously (and in any event by 2015). While the Commission is not itself subject to the RSIA’s specific mandate, the effectuation of that mandate necessarily entails the Commission’s involvement: implementation of PTC requires spectrum subject to Commission regulation.<sup>14</sup> As a result, any party seeking to comply with the RSIA is dependent on the

---

<sup>14</sup> *See Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Spectrum Needs for the Implementation of the Positive Train Control Provisions of the Rail Safety Improvement Act of 2008,” WT Docket No. 11-79, DA 11-38, released May 5, 2011.

cooperation of the Commission. That cooperation cannot be withheld absent extraordinary factors not present here. *Id.*

15. In fact, all relevant factors in the instant case uniformly support the requested relief.

16. No governmental interest is more important than public safety. In the RSIA, Congress has with unmistakable and unequivocal clarity assigned public safety in rail transportation the highest priority. Going further, Congress has dictated that, as a matter of Federal public safety policy, rail systems such as SCRRA's must utilize PTC.

17. Nothing in the Communications Act is inconsistent with the RSIA mandate. To the contrary, the Commission's broad statutory charge to act in "the public interest" affords the agency extensive latitude to act consistently with Federal policies. More importantly, Section 1 of the Communications Act, 47 U.S.C. §151, expressly lists "promoting safety of life and property through the use of wire and radio communications" as one of the Commission's fundamental purposes. Thus, there is no tension at all between the RSIA mandate, on the one hand, and the FCC's statutory purposes, on the other. Rather, by helping to advance the goal of the RSIA, the Commission complies with its own explicit statutory duty.

18. While the relief requested by SCRRA does require some waivers of Commission policies and/or procedures, those waivers are well within the scope of Commission precedent and authority and none would result in any adverse effect on the public interest.

19. ***Technical Waivers.*** As discussed in detail in SCRRA's waiver requests submitted in March, 2010, SCRRA finds itself in a difficult position. The RSIA mandates that SCRRA develop and implement a PTC system in very short order, and that system must be interoperable with similar systems used by other railroads. But the spectrum already obtained by

the other rail carriers operating in proximity to SCRRA's system is insufficient to permit SCRRA access to that spectrum. That is, SCRRA has been forced to identify alternate spectrum which (a) is available in sufficient amounts in SCRRA's operating area and (b) would permit interoperability with other rail carriers in that area.

20. After a diligent review of the available options, SCRRA determined that MC/LM's AMTS spectrum constituted the only practical option. While AMTS spectrum is not allocated for PTC use, the fact is that no spectrum is currently allocated specifically for such use. But the Commission has already determined that the technical service requirements to which that spectrum is ordinarily subject may be waived – indeed, the Commission has provided guidance with respect to such waiver requests. Thus, the Commission has already established that AMTS spectrum may be used for purposes not within the scope originally contemplated for AMTS stations. *MariTEL Order, supra, note 12*, ¶26.<sup>15</sup> It is difficult to imagine a more suitable alternate use for that spectrum than SCRRA's contemplated PTC system. By authorizing such use the Commission would be complying with its general obligation to accommodate statutory regimes (in this case, RSIA) as well as its particular statutory obligation to promote safety of life and property through the use of wire and radio communications. Moreover, the Chairman has often remarked on the need for more efficient spectrum use policies, including through secondary markets and spectrum flexibility.<sup>16</sup> Granting this application now would be an

---

<sup>15</sup> The precise technical rule sections that would have to be waived with respect to SCRRA's proposal, and separate discussions of those proposed waivers, are addressed in detail in SCRRA's initial waiver request filed in March, 2010. That request is hereby incorporated by reference.

<sup>16</sup> See, e.g., *America's Mobile Broadband Future*, Prepared Remarks of Chairman Julius Genachowski, at 5, October 7, 2009, available at <http://www.fcc.gov/commissioners/genachowski/speeches2009.html>.

example of the most efficient and flexible spectrum management policy, leveraging a secondary market to ensure spectrum is used sooner than later and for a use clearly in the public interest.

21. ***Jefferson Radio Policy.*** The removal of the SCRRA application from the MC/LM Hearing and its prompt grant may raise considerations under the Commission's "*Jefferson Radio*" policy. That policy (developed in the broadcast context and affirmed by the U.S. Court of Appeals for the D.C. Circuit in *Jefferson Radio, Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964)) provides that the Commission will ordinarily not approve the assignment of a license when the qualifications of the assignor/licensee are in doubt. In view of the issues which have been designated for hearing relative to MC/LM, the proposed assignor in the SCRRA application, that policy might be said to apply here.

22. But over the course of more than four decades the Commission has repeatedly waived the *Jefferson Radio* policy in a variety of circumstances. *E.g.*, *Harry O'Connor*, 2 FCC2d 45 (1965); *Second Thursday Corp.*, 22 FCC2d 515 (1970); *Hertz Broadcasting of Birmingham, Inc.*, 57 FCC 2d 183, 184-85 (1976); *Lane Broadcasting Corporation*, Letter, 20 FCC Rcd 19373, 19375 (Media Bureau 2005); *Mountain View Communications, Inc.*, 24 FCC Rcd 13516 (Media Bureau 2009); *see also LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974). While each such case includes distinct factual settings, a common principle running through all these cases is that a proposed assignment may be granted if that action will *not* result in any direct benefit to the allegedly unqualified assignor/licensee. In the instant case, SCRRA and MC/LM are committed to re-structure the payment aspect of their transaction as necessary to insure that it conforms to that principle and to take such additional steps as the Commission may reasonably impose in connection with grant of the above-captioned applications.

23. To that end, SCRRA and MC/LM have agreed that, at consummation, the purchase price will be paid by SCRRA into an escrow account subject to an escrow agreement that will previously have been presented to the Commission. (The escrow agent will be an individual or institution independent of SCRRA and MC/LM; the agent, too, will be identified to the Commission in advance, so that the Commission can be satisfied that the agent will, in fact, be independent.) The escrow agreement will specify, *inter alia*, the identity of individuals and/or entities to whom payments may be made by the escrow agent. Those payees would include unaffiliated third-party creditors (including, *e.g.*, the Commission itself, with respect to any unjust enrichment payment which might be owed to the Commission by MC/LM). The escrow agreement, which will have been submitted to the Commission, will expressly prohibit disbursements to MC/LM or its owner.

24. SCRRA and MC/LM are committed to assuring that any consummation of their transaction conforms to Commission policy and precedent. To the extent that the Commission may choose to impose additional reasonable safeguards, SCRRA and MC/LM will take appropriate steps to seek to satisfy such additional requirements. Thus, the policies underlying *Jefferson Radio* would not be adversely affected.

25. Another factor which has been cited in support of waivers of the *Jefferson Radio* policy is the fact that, as a result of approval of the assignment, the spectrum at issue would be put to use in the public interest. *E.g., Mountain View Communications, Inc., supra.* Unquestionably that is the case here: implementation of PTC by SCRRA on the spectrum it proposes to acquire would clearly be in the public interest. Department of Transportation Secretary Raymond LaHood has emphasized the importance of implementing PTC, calling it “life-saving technology” and stating that the Federal Railroad Authority (“FRA”) believes

positive train control systems will make “freight, intercity and commuter rail lines safer for the benefit of communities across the country.”<sup>17</sup> The FCC has also recognized the public safety interest in facilitating PTC systems, noting that they have “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.”<sup>18</sup>

26. The instant case also features an additional element that further supports waiver of the *Jefferson Radio* policy. Grant of the SCRRA application would *not* terminate the MC/LM Hearing. Since SCRRA is proposing to acquire only a relatively small portion of MC/LM’s holdings, the Commission would still be in a position to adjudicate MC/LM’s qualifications and, if the evidence so warrants, relieve MC/LM of some or all of its other authorizations. In other words, notwithstanding severance and grant of the SCRRA application, the Commission would still be in a position to impose on MC/LM the type of “awesome loss” contemplated in *Jefferson Radio*.

27. Accordingly, subject to the terms and conditions agreed to by SCRRA and MC/LM, removal and grant of the SCRRA application is clearly consistent with well-established and longstanding Commission practice.

28. ***Procedural Waivers/Removal and Grant.*** The requested severance also requires the Commission to take certain special procedural steps. The SCRRA application should be

---

<sup>17</sup> Department of Transportation, *FRA Issues NPRM on Technology to Prevent Train Collisions*, <http://www.dot.gov/affairs/2009/fra0409.htm> (last visited May 5, 2011). See, also, Federal Railroad Administration, *Positive Train Control*, <http://www.fra.dot.gov/us/content/784> (last visited May 5, 2011); Letter from Joseph C. Szabo, Administrator, FRA, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC, WT Docket 10-83 (dated April 16, 2010).

<sup>18</sup> See *Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules*, 24 FCC Rcd 8537 (2009) at ¶13 (“*PTC-220 Waiver Order*”).

formally “removed from the ambit” (to use the terminology of the Footnote 7 to the HDO) of the MC/LM Hearing pursuant to an order that severs any and all relationship between the SCRRA application and the on-going hearing. That is, once the severance occurs, the spectrum proposed to be sold to SCRRA must no longer be subject in any way to the outcome of the MC/LM Hearing.<sup>19</sup> This is important because, if SCRRA is going to proceed with the acquisition of the spectrum (subject, of course, to prior Commission approval) and invest over \$200 million in the implementation of a PTC system using that spectrum<sup>20</sup>, SCRRA will need the certainty that its license for that spectrum will not be lost as a result of an on-going hearing that might not be finally resolved until years after the deadline for compliance with RSIA – and it will need to have the Commission act promptly.

29. SCRRA’s needs are reasonable. *Prompt* action is necessary because of the fast-approaching deadline for establishment of its PTC system and the need to test for interoperability now. Congress has imposed a 2015 deadline, and SCRRA, along with BNSF and UPRR, has committed to California legislators and residents that it will implement PTC by the end of 2012, in order to maximize rider safety. With barely 18 months to go, time is obviously tight, thanks in large measure to the fact that more than a year has already passed since SCRRA first sought Commission consent to acquire the MC/LM spectrum. Any significant additional delay in obtaining Commission approval would effectively amount to denial of the SCRRA-MC/LM application. Because that would also seriously – and possibly terminally – threaten SCRRA’s

---

<sup>19</sup> The Commission could, of course, as a condition of severance, remove the spectrum from the MCLM Hearing – immunizing it from whatever adverse effects might arise in that hearing – *as long as* the assignment to SCRRA is ultimately granted and consummated.

<sup>20</sup> SCRRA’s current budget for implementation of PTC is \$201.6 million. It has already expended \$29.6 million in planning and preparation.

ability to comply even with the 2015 implementation deadline, delay should be avoided at all costs.<sup>21</sup>

30. SCRRRA has a critical need for complete separation of SCRRRA from any on-going MC/LM Hearing. The hearing process is long and deliberate and difficult to expedite in any event, even more so when there are multiple adversarial parties and a host of factual issues to be tried, none of which involves any allegations of any misconduct by SCRRRA. As a practical matter, the MC/LM Hearing itself may not be concluded (with issuance of an Initial Decision) for a year or more. That could then be followed by administrative and judicial appeals which would likely take years more. In other words, it seems likely that the MC/LM Hearing will not be finally concluded until at least 2015, and possibly later, should any appeals happen to result in remands for further deliberations, which could extend the process years longer.

31. But SCRRRA is subject to its own 2012 deadline – promised to the people of California and their political leaders – to protect the safety of its riders, crews, and trains, in addition to the RSIA 2015 deadline for completion of PTC implementation.

32. To achieve such completion, including the interoperability mandate in the statute, SCRRRA will not only have to obtain the spectrum, but also design, construct and test extensive facilities. The delay SCRRRA has already encountered at the Commission clearly threatens its ability to meet the 2012 deadline. If SCRRRA is forced to await the final conclusion of the MC/LM Hearing before SCRRRA can know for certain that it will be permitted to retain the

---

<sup>21</sup> Of course, given the important public safety considerations inherent in the implementation of PTC as soon as possible, the Commission itself should be highly motivated to act as quickly as possible regardless of any statutorily-imposed deadlines. Under no circumstance should unnecessary bureaucratic steps be permitted to delay technological improvements designed to prevent potential rail catastrophes.

spectrum going forward, its ability to meet even the longer RSIA deadline will be seriously compromised, if not completely frustrated.<sup>22</sup>

33. It is critical for SCRRA to obtain certainty that the spectrum, once granted to it, will not be withdrawn years down the line as a result of a hearing process in which SCRRA would not have been a participant. PTC is a permanent, statutorily-mandated mechanism which will provide SCRRA and its passengers an important degree of safety. SCRRA and the public at large – both passengers and all others who might be affected by any catastrophe that might be prevented by PTC – are entitled to know that the spectrum, the essential element on which the PTC system is built, is not subject to withdrawal at some undeterminable future point for reasons having nothing to do with SCRRA or the safety needs of the people of Southern California.

34. Because of these considerations, SCRRA seeks prompt action by the Commission removing SCRRA's application from the MC/LM Hearing (*see* Footnote \_\_\_ above, concerning possible conditions on such severance). Once its application is severed, SCRRA requests that its application and related waiver requests be granted, *by the Commission*, at the earliest possible date. Action *by the Commission* is important because of the need to reduce to an absolute minimum the possibility of any bureaucratic delay here.

35. SCRRA acknowledges that the Wireless Bureau is the office which ordinarily acts on routine assignment applications and waiver requests. But decisions of the Bureau are subject to two potential types of administrative review (*i.e.*, petitions for reconsiderations filed pursuant

---

<sup>22</sup> SCRRA recognizes that both (a) the action removing its application from the MCLM Hearing and (b) the action granting its applications and waivers would be subject to separate review and appeal proceedings. But the time frame for such proceedings would be significantly shorter than those anticipated for the MCLM Hearing since the severance and grant orders would – at least ideally – be issued long before the MCLM Hearing wraps up and the review/appeal clocks relative to the HDO begin to run.

to 47 C.F.R. §1.106, and applications for review filed pursuant to 47 C.F.R. §1.115), following which judicial appeal may be sought. By contrast, decisions by the full Commission are subject only to possible petitions for reconsideration before the matter goes to court – and the scope of any reconsideration effort is particularly circumscribed (*see* 47 C.F.R. §1.106). Moreover, the Wireless Bureau has had the above-captioned applications before it for over a year, and presumably has had ample time to consider all related issues.

36. SCRRA believes that, if the Commission (rather than the Bureau) were to grant SCRRA’s application and waiver requests in the first instance, the process of obtaining a final order – that is, an order not subject to any further administrative or judicial reconsideration or review – would be shortened by at least a year (and possibly considerably more). Because of obvious public safety concerns, such a procedural abbreviation is plainly warranted.

37. Section 154(j) of the Communications Act of 1934, 47 U.S.C. §154(j), provides broadly that the FCC “may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” In other words, there is no statutory impediment to the approach proposed here. To the contrary, as the Supreme Court observed with respect to Section 154(j), “Congress has left largely to [the Commission’s] judgment the determination of the manner of conducting its business which would most fairly and reasonably accommodate the proper dispatch of its business and the ends of justice.” *FCC v. Schreiber*, 381 U.S. 279, 289 (1965) (internal quotation omitted). *See also, e.g., See, e.g., City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656 (D.C. Cir. 1984); *Nader v. FCC*, 520 F.2d 182, 195-97 (D.C.Cir. 1975); *City of San Antonio v. CAB*, 374 F.2d 326, 329 (1967) (“No principle of administrative law is more firmly established than that of agency control of its own calendar.”) (citations omitted).

38. Thus, the Commission is statutorily authorized to provide precisely the prompt procedural relief called for in this extraordinary case. In order to assure the earliest possible deployment of important public safety measure *mandated by Congress*, the Commission should avail itself of that authority as soon as possible.

#### CONCLUSION

39. The promotion of safety of life and property is one of the Commission's core statutory purposes. Congress has determined that PTC capability is an important public safety feature, so important that Congress has ordered SCRRRA (and other railroads) to implement PTC on an expedited timetable. In the interest of providing its passengers and others affected by its operations with the Congressionally-ordered safety measure as soon as possible, and with the endorsement of California legislators, SCRRRA has committed itself to an even more expedited timetable than Congress's.

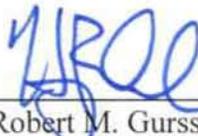
40. SCRRRA's ability to meet even Congress's timetable, much less its own, now depends on the Commission.

41. Chronic bureaucratic delay is an unfortunate fact of life in the Federal government. But it need not be and, where public safety is concerned, it cannot be allowed to be. Where the lives and property of the citizenry are on the line, any but the most expedited action by a Federal agency is unacceptable – particularly when bureaucratic delay threatens the ability of an entity to comply with Congressionally-imposed public safety measures.

42. SCRRRA welcomes the Commission's invitation, in Footnote 7 of the HDO, as an indication that the Commission recognizes the importance of prompt, favorable, final action relative to SCRRRA's application and waiver requests. We urge the Commission to follow

through on that recognition with appropriate actions as set forth herein, beginning with the removal of the above-captioned applications from the MC/LM Hearing by June 15.

Respectfully submitted,

/s/   
Robert M. Gurss  
Paul J. Feldman  
Harry F. Cole  
Christine Goepp

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street -11th Floor  
Arlington, Virginia 22209  
703-812-0400

*Counsel for Southern California  
Regional Rail Authority*

May 9, 2011

## CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 9th day of May, 2011, I caused copies of the foregoing "Showing Pursuant to Footnote 7" to be placed in the U.S. mail, first class postage prepaid, or transmitted by facsimile or email (as indicated below), addressed to the following:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(Courtesy copy – by email –  
Richard.Sippel@fcc.gov)

P. Michele Ellison, Chief  
Pamela Kane, Esquire  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(by email – Michele.Ellison@fcc.gov)

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

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

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

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

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

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

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

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

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

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

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

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

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

Environmental, LLC  
2509 Stuart Street  
Berkeley, CA 94705

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

Skybridge Spectrum Foundation  
2509 Stuart Street  
Berkeley, CA 94705

Telesaurus Holdings GB LLC  
2509 Stuart Street  
Berkeley, CA 94705

Verde Systems LLC  
2509 Stuart Street  
Berkeley, CA 94705

V2G LLC  
2509 Stuart Street  
Berkeley, CA 94705

Warren Havens  
2509 Stuart Street  
Berkeley, CA 94705

/s/   
\_\_\_\_\_  
Harry F. Cole