

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

In the Matter of)
)
Spectrum Needs for the Implementation of the) WT Docket No. 11-79
Positive Train Control Provisions of the Rail)
Safety Improvement Act of 2008)

**REPLY COMMENTS OF
THE COALITION OF 218-219 MHz LICENSEES**

The Coalition of 218-219 MHz Licensees (the “Coalition”),¹ by counsel and pursuant to Section 1.415 of the Commission’s Rules, hereby replies to certain Comments submitted in the above-captioned proceeding.² As long-time incumbent licensees holding valid licenses acquired through the Commission’s competitive bidding processes, the Coalition’s members believe that re-allocation of any portion of the 218-219 MHz band would constitute an unprecedented and unfair redistribution of spectrum. Railroad companies should avail themselves of existing secondary market mechanisms to acquire 218-219 MHz spectrum rather than seeking governmental intervention to end-run the secondary market to their private advantage. Moreover, an audit to determine the operational status of 218-219 MHz Service licensees is unjustified and unnecessary – each licensee complied with Commission rules by demonstrating “substantial service” sufficient to warrant license renewal.

¹ A list of the 218-219 MHz Service licensees composing the Coalition is attached hereto as Exhibit 1.

² 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*,” DA No. 11-838, rel. May 5, 2011 (“*Public Notice*”).

Background

The Coalition members, or their predecessors-in-interest, acquired their licenses in 1994 by becoming qualified high bidders at the Commission's only oral outcry auction.³ The licensees paid the U.S. Treasury millions of dollars for these licenses and have invested millions more in equipment acquisition, facilities construction and system operations. Each of the 48 licensees satisfied the "substantial service" obligations described in Section 95.833(a) when they renewed their licenses in 2004 and 2005.

In the *Public Notice*, the Wireless Telecommunications Bureau seeks public input on how the Commission should make spectrum available for the Positive Train Control ("PTC") provisions of the Rail Safety Improvement Act of 2008 (the "RSIA"). Though neither Congress nor the Commission identified any particular spectrum for PTC operations, the technology developed so far relies on spectrum in the 216-222 MHz band. In casting its eyes on the 218-219 MHz band as preferred spectrum for PTC operations,⁴ commenters point to the small number of 218-219 MHz licensees occupying the band as a basis for seeking its re-designation for PTC without the requirement of competitive bidding. Some commenters also ask the Commission to audit the operations of the 218-219 MHz licensees, ignoring the fact that the licensees satisfied applicable "substantial service" requirements when renewing their licenses.

³ See Public Notice, "Announcing High Bidders for 594 Interactive Video and Data Service (IVDS) Licenses," rel. Aug. 2, 1994.

⁴ See, e.g., Comments of Association of American Railroads, WT Docket No. 11-79, filed June 20, 2011 ("AAR Comments"), at 2 (identifying AMTS bands and 218-219 MHz bands as "a suitable supplement" to existing 220-222 MHz PTC spectrum); Comments of Peninsula Corridor Joint Powers Board, WT Docket No. 11-79, filed June 20, 2011 (AMTS and 218-219 MHz bands are "possible candidates" for PTC).

Discussion

I. THE COMMISSION SHOULD NOT RE-ALLOCATE THE 218-219 MHz SPECTRUM FOR PRIVATE RAILROAD SERVICES.

The railroad companies have identified the 217-222 MHz band as “the *de facto* home of PTC operations for both the freight and passenger rail segments of the industry.”⁵ PTC-220, LLC (“PTC-220”), a consortium of the four largest freight rail carriers, indicates that it has acquired licenses in the 220-222 MHz band because its propagation characteristics are similar to the 160 MHz base station spectrum railroads use for train dispatching.⁶ Notably, the RSIA did not identify this spectrum band or even the amount of spectrum necessary to implement its provisions;⁷ instead, the Class 1 freight rail companies and their sole radio design vendor, MeteorComm LLC, made these choices unilaterally.⁸ Not coincidentally, MeteorComm is a wholly-owned subsidiary of BNSF, one of the four owners of PTC-220.⁹

Some commenters now suggest that, in some metropolitan areas, the 220-222 MHz band may, at some undetermined time, be insufficient to accommodate PTC operations. Unwilling or unable to be more specific about their needs, and having only a single technology, a single radio design firm and a single spectrum band in mind, many of the railroad companies suggest that 500 kilohertz of the 218-219 MHz band should be

⁵ Amtrak Comments, WT Docket No. 11-79, filed June 20, 2011 (“Amtrak Comments”), at 3.

⁶ See Comments of PTC-220, LLC, WT Docket No. 11-79, filed June 20, 2011 (“PTC-220 Comments”), at 2.

⁷ See, e.g., Comments of Genessee & Wyoming Inc., WT Docket No. 11-79, filed June 20, 2011.

⁸ Notably, the California High-Speed Rail Authority (“CHSRA”), a passenger rail authority, recognizes the “sourcing risk and additional cost” presented by the “MeteorComm monopoly arrangement for 220 MHz PTC technology.” Comments of the California High-Speed Rail Authority, WT Docket No. 11-79, filed June 14, 2011 (“CHSRA Comments”), at 6.

⁹ See Press Release, “MeteorComm Wins Next Generation Railroad Voice/Data Radio Development Project,” posted July 29, 2008, available at <http://www.meteorcomm.com/news.aspx> (last visited July 7, 2011).

re-allocated as a private service and simply given to the rail industry for free.¹⁰ The railroad companies also have failed to take advantage of the secondary market to acquire spectrum rights they claim to need. In light of these shortcomings, the Commission should reject this attempted spectrum grab.

A. The Railroad Industry Has Failed to Justify Why it Requires the 218-219 MHz Band for PTC Operations.

In seeking re-allocation of the 218-219 MHz band for private railroad use, the railroad companies identified only a small segment of spectrum that can accommodate their technology. They provide no reasons why other spectrum near 160 MHz cannot be used for PTC, and instead present the false choice between the AMTS band (much of which is subject to Commission litigation) and the 218-219 MHz band. To the extent the 217-220 MHz band is “suitable,” as some commenters argue,¹¹ nothing in the record suggests that it is the only band that will work for PTC operations.

To the contrary, one commenter believes that the 217-220 MHz band is *not* suitable for PTC operations. The California High-Speed Rail Authority (“CHSRA”) suggests that the PTC technology under design for the 220 MHz band may be unable to accommodate high-speed passenger rail transportation, stating that:

This technology is currently in development and it is uncertain whether 220 MHz PTC systems could be adapted to safely operate at 250 mph, representing significant risk to implementing CHSTP using the technology. Additionally, Doppler shift, fading, including multipath fading and other radio phenomenon which disturb system performance are emphasized in the high-speed rail environment. Solutions to mitigate

¹⁰ See, e.g., Comments of the Metropolitan Transportation Authority, WT Docket No. 11-79, filed June 20, 2011 (“MTA Comments”), at 5; Comments of the Dallas Area Rapid Transit Authority, WT Docket No. 11-79, filed June 20, 2011 (“DART Comments”), at 7-8; Comments of the Joint Council on Transit Wireless Communications, WT Docket No. 11-79, filed June 20, 2011 (“Joint Council Comments”), at 4.

¹¹ See, e.g., AAR Comments at 2.

these radio impacts must be integrated early into design of the system, otherwise this represents intolerable risk.¹²

The CHSRA instead suggests that, consistent with PTC allocations in Europe and elsewhere, PTC should be deployed using GSM-R technology in the 900 MHz band with minimum duplex spacing of 45 megahertz as “the lowest-risk path..., as the worldwide GSM-R equipment marketplace richly supports these frequencies.”¹³ Given the common ownership of PTC-220 and its technology partner by the freight railways and the serious concerns expressed by CHSRA, the use of only the 217-222 MHz band for PTC operations cannot simply be presumed. Based on the record, the Commission should not be lured into believing there are no other spectrum options available to implement the PTC provisions of the RSIA.

B. Spectrum in the 218-219 MHz Band is Available via the Secondary Market.

To the extent they need additional spectrum, the railroad companies can avail themselves of the Commission’s secondary market policies and seek to acquire or lease spectrum from incumbent licensees. In fact, PTC-220 has acquired a large number of nationwide and regional 220-222 MHz licenses from previous licensees to achieve a nationwide footprint.¹⁴ PTC-220 leases four of these licenses to other parties,¹⁵ illustrating that the Commission’s secondary market policies work to the benefit of the railroad interests.

¹² CHSRA Comments at 5.

¹³ *Id.* at 7. See also PTC-220 Comments at 8-9 (discussing other train control systems, including GSM-R).

¹⁴ Commission records show that PTC-220 is the licensee of two “NC” (nationwide commercial) and 21 “QA” (regional auctioned) licenses in the 220-222 MHz band.

¹⁵ According to ULS, the stations under lease are WPPF444, WPFR284, WPOI701 and WPOI702.

PTC-220 provides a preliminary list of 22 metropolitan areas that “could require” additional spectrum for PTC.¹⁶ By characterizing this list as “preliminary” and admitting that it is “still in the process of developing a model to predict the amount of spectrum that will be needed” and that the “list could change” following further analysis, PTC-220 concedes that the future need for PTC spectrum, and how much is needed in a given urban area, is still up in the air.¹⁷ Indeed, the need for additional spectrum may be overstated or premature. As NJ Transit points out, the Class 1 freight railroads “are unable to commit to offering the necessary bandwidth to NJ TRANSIT until such time as their own needs are fulfilled.”¹⁸ There is no credible estimate of the need for additional spectrum beyond that which PTC-220 has obtained in the 220-222 MHz band – it is even possible that the need can be met with existing spectrum if the freight and passenger rail interests can reach agreement. The current inability of these interests to reach an agreement should not be the basis for the Commission to undertake a re-allocation of nearby spectrum simply because proprietary equipment happens to work there.

Assuming *arguendo* the general accuracy of the PTC-220 list, the railroad industry has opportunities to acquire 218-219 MHz spectrum rights from existing licensees.¹⁹ In six of the 22 markets,²⁰ there are two active 218-219 MHz Service licenses, meaning there is a full one megahertz of spectrum available for the railroads to

¹⁶ See PTC-220 Comments at 3.

¹⁷ *Id.*

¹⁸ Comments of NJ Transit, WT Docket No. 11-79, filed June 20, 2011 (“NJ Transit Comments”), at 4.

¹⁹ MTA complains that “no one seller can provide spectrum to meet the complete needs of the MTA Railroads, both in our core operational areas and in required buffer areas.” MTA Comments at 2. Such a situation is hardly unique, however; service providers often have to negotiate with multiple incumbents to aggregate sufficient spectrum across a sufficient geographic area to fulfill their service goals.

²⁰ These markets are New York/Newark, Los Angeles, Chicago, Dallas/Ft. Worth, Houston and Philadelphia.

acquire, lease or partition via secondary market transactions.²¹ In two other markets,²² there is one 218-219 MHz licensee that can be approached for license acquisition, lease or partition. The Coalition is aware that at least three railroads have solicited proposals to acquire spectrum rights from 218-219 MHz Service licensees.²³ Although Commission records show that no rail carriers have entered into sale, lease, partition or disaggregation transactions in the 218-219 MHz band requiring prior Commission approval, it is clear that some of them understand the availability of secondary market transactions to obtain spectrum rights.²⁴

Over the years, several of the 218-219 MHz Service licenses have changed hands, and the two Washington, DC licenses are leased to Full Spectrum, Inc. (“Full Spectrum”).²⁵ Like PTC-220 and its leasing partners, Full Spectrum obviously was able to negotiate successfully for the lease of 218-219 MHz spectrum to effectuate its business plans. Clearly, the Commission’s secondary market policies are working.

To the extent the rail firms may at some point require additional spectrum in congested markets, their Comments make clear that regional geographic-based licenses (*e.g.*, MSAs and RSAs) are unnecessary to implement PTC. AAR and PTC-220 both state that PTC can be deployed in 140-mile “ribbons” along the existing railroad rights-

²¹ *See also* DART Comments at 8.

²² These markets are Denver and St. Louis.

²³ *See* NJ Transit Comments at 5; MTA Comments at 2; Amtrak Comments at 4, n.10.

²⁴ Metra complains that it “is not in an economic position to fund the acquisition of PTC spectrum” and asks the Commission exempt Metra from paying spectrum acquisition costs. Comments of Metra, WT Docket No. 11-79, filed June 20, 2011. Metra does not describe the efforts it took to make this determination. Assuming Metra is referring to the 218-219 MHz Service spectrum, the Commission has no such authority to confiscate a license purchased from the government (and paid to the taxpayers) so that another governmental authority can obtain spectrum rights. Although Metra does not wish to pass spectrum acquisition costs along to taxpayers, it should remember that the taxpayers have already received substantial auction revenues from the sale of spectrum.

²⁵ *See* Lease File Numbers are L000008203 (for KIVD0014) and L000008204 (for KIVD0013).

of-way.²⁶ Spectrum along these ribbons can be partitioned by lease or by acquisition from existing licensees or future licensees in secondary market transactions.

At bottom, the railroad industry views this proceeding as an opportunity to seize, without charge, spectrum that existing licensees legitimately acquired by auction and in the secondary market. Other than PTC-220, the rail firms either have been unwilling to try or unable to complete secondary market transactions that could yield the spectrum they claim to need, or they really do not need more spectrum. Regardless of which is true in a given market, the railroad industry should not be rewarded with free spectrum as compensation for its shortcomings.

C. The Commission Should Auction Unassigned 218-219 MHz Spectrum.

The railroad interests ask the Commission to make “unoccupied” 218-219 MHz spectrum available only to rail carriers without competitive bidding.²⁷ Given the availability of licensed 218-219 MHz spectrum in eight of the 22 urban areas on PTC-220’s preliminary list, the potential future need for additional spectrum apparently is limited to 14 areas. The unassigned 218-219 MHz spectrum covers all but 41 of the MSAs and all 428 RSAs, few of which are projected to be used for “overflow” spectrum for PTC operations. The limited need for additional spectrum, to the extent it exists, would result in a substantial amount of wasted spectrum that could otherwise be used for commercial services.

The better alternative is for the Commission to proceed with competitive bidding to allow those participants that most value the spectrum to obtain it. Because the railroads project a need for additional spectrum in only 14 urban areas where 218-219

²⁶ See AAR Comments at 5-6; PTC-220 Comments at 6. The Coalition offers no opinion at this time on the appropriate size of any “ribbons.”

²⁷ See Amtrak Comments at 4-5, 9; MTA Comments at 3.

MHz licenses are not available, the financial burden on them should be relatively small, assuming they become the high bidder. More importantly, spectrum in almost 700 MSAs and RSAs – the majority of which was never auctioned – would be available for purchase for commercial services.

II. THERE IS NO BASIS FOR THE COMMISSION TO AUDIT 218-219 MHz OPERATIONS.

Several commenters suggest that the Commission should conduct an audit of operations in the 218-219 MHz band.²⁸ While it cannot be denied that the band has been largely undeveloped, the 48 licensees that remain took appropriate steps to demonstrate “substantial service” at license renewal, in accordance with Sections 95.833(a) and (b) and Commission policies.²⁹ The renewal applications were accepted for filing by public notice in 2004 and 2005, and any interested party could have objected to the license renewals and “substantial service” showings at that time. The Coalition is not aware of the filing of any petitions by any party, including those that now seek to audit operations in a belated *de facto* collateral attack on licenses that were renewed in due course.

The Commission cannot expose licensees that complied with “substantial service” rules to a mid-term audit simply based on the unsupported conjecture and innuendo of a few commenters. The Commission’s administrative policies would be rendered meaningless, and the certainty that license renewal provides for further investment, business planning and growth would be curtailed.

²⁸ See, e.g., MTA Comments at 6; Amtrak Comments at 7; DART Comments at 8.

²⁹ See Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999), 1538-1540.

Conclusion

The Coalition urges the Commission to reject proposals to re-allocate 218-219 MHz spectrum for private railroad operations in light of the uncertain need for additional spectrum in this band and the availability of secondary markets to facilitate spectrum acquisition transactions. The Commission also should reject the suggestion that licensees should be subject to a Commission audit of their operations.

Respectfully submitted,

**THE COALITION OF 218-219 MHz
SERVICE LICENSEES**

Date: July 11, 2011

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Its Attorneys

Exhibit 1

List of Coalition Members

| Licensee | Call Sign | Market |
|-------------------------------|------------------|------------------|
| U S Telemetry Los Angeles LLC | KIVD0003 | Los Angeles, CA |
| U S Telemetry Chicago LLC | KIVD0005 | Chicago, IL |
| U S Telemetry Dallas LLC | KIVD0015 | Dallas, TX |
| U S Telemetry Houston LLC | KIVD0017 | Houston, TX |
| WHF Inc. | KIVD0007 | Philadelphia, PA |