WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com

August 17, 2011

VIA ECFS

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

Re: WT Docket No. 11-79
Spectrum Needs for the Implementation of Positive Train Control

National Railroad Passenger Corporation ("Amtrak"), pursuant to Section 1.1206 of the Commission's rules,[1] hereby provides notice of a meeting on August 15th involving the undersigned and the persons identified below:

- Michael McKenzie**,** Deputy Bureau Chief, Wireless Telecommunications Bureau ("WTB");
- Roger Noel, Chief, Mobility Division, WTB;
- Jennifer Flynn, Legal Advisor, WTB;
- Lloyd Coward, Deputy Chief, Mobility Division, WTB;
- Richard Arsenault, Chief Counsel, Mobility Division, WTB;
- Michael J. Alexis, Amtrak;
- William Forman, Amtrak;
- Scot Roche, Amtrak;
- David Flinkstrom, Amtrak Consultant;
- William Stroud, Amtrak Consultant.

The parties generally discussed the attached presentation on the issues detailed in Amtrak's Comments and Reply Comments in the above-referenced proceeding regarding Amtrak's need for additional spectrum to implement the positive train control ("PTC") provisions of the Rail Safety Improvement Act of 2008 ("RSIA").[2] The parties also discussed the deployment status of Amtrak's proposed PTC solution – the Advanced Civil Speed Enforcement System ("ACSES").

[1] 47 C.F.R. § 1.1206.

[2] Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (2008).

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Lawrence J. Movshin
Lawrence J. Movshin
Robert G. Kirk

cc: Michael McKenzie
Roger Noel
Jennifer Flynn
Lloyd Coward
Richard Arsenault

AMTRAK PRESENTATION
Docket 11-79

Meeting Rail Carriers' Spectrum Needs in the Implementation of Positive Train Control

PTC is Congressionally Mandated

- The issue for the Commission is not whether PTC should be implemented – the RSIA requires rail carrier implementation and the FCC is appropriately assuring that lack of spectrum does not impede carriers' ability to satisfy that Congressional mandate.
- Consistent with its public interest obligation, the Commission is properly considering what spectrum needs exist and what the Commission should do to "facilitate an effective, efficient, and timely process for railroads to acquire spectrum to comply with the PTC implementation requirements under the RSIA and FRA regulations."

The 217-222 MHz Band is appropriately the de facto home for PTC spectrum

- Because of its availability in the secondary market over the last few years, the major freight carriers have acquired substantial spectrum in the 220 MHz Radio Service and are designing their PTC system in that band.
- Although it is technically feasible to use other bands for passenger rail implementation and still achieve spectrum interoperability with the freight system, there are "off the shelf" products available in the 220 MHz band which avoid the delays inherent in designing and fabricating new products unique to PTC in other bands. The favorable propagation characteristics of the 220 MHz band, along with the economies that would result from the design and manufacturing of equipment in a single part of the spectrum, make it the most attractive band for PTC.

The 217-222 MHz Band holds the greatest promise for satisfying rail carriers needs

- Based on a general review of spectrum availability on a regional and nationwide basis, the 217-222 MHz band appears to have the most available spectrum for satisfying the needs of the rail industry with the least amount of disruption to existing licensees and/or transactional costs associated with the need to engage in a multitude of secondary market transactions.

Rail Carriers Have Diligently Pursued Spectrum Opportunities

- The record in Docket 11-79 demonstrates that most carriers have tried to satisfy their spectrum requirements in the secondary market.
- The freight industry has purchased a substantial amount of the available inventory in the 220 MHz band to satisfy their requirements.
- Passenger rail carriers like Amtrak have pursued secondary market transactions, but have not yet identified willing sellers at a reasonable price that can satisfy their full spectrum requirements.

Secondary Markets create significant costs and complexities

- Short term leasing will not work as rail carriers need long-term certainty of spectrum availability.
- Longer term leases have not been readily available in coverage areas that provide more than spot coverage to the required rail lines.
- Partitioning opportunities are now limited to one or two larger geographic markets or to a hodge-podge of site-based licenses with limited geographic coverage. Transactional costs become prohibitive, even if some measure of coverage could be achieved.

There are no easy secondary market alternatives available for Amtrak on the Northeast Corridor

- Unlike many of the other rail carriers seeking to obtain spectrum in the secondary markets, as a federally funded entity, Amtrak's procurements are subject to grant agreements with the federal government, which complicate its ability to buy spectrum on the secondary market.
- Although subject to these federal requirements in obtaining spectrum, Amtrak does not have access, as federal agencies do, to government spectrum.
- Amtrak did engage in a broad Request for Proposals to satisfy its spectrum needs over the Washington – Boston Northeast Corridor.
  - The RFP was sent to virtually every licensee in the AMTS, 217-219 MHz and 220 MHz band with reasonable geographic coverage over the Northeast Corridor.
  - The RFP appropriately required that respondents attempt to satisfy as much of Amtrak's coverage requirements as possible with spectrum that was not encumbered by any other user and that could be utilized by Amtrak generally without interference from co-channel or adjacent channel licensees along the Northeast Corridor.
  - Only one licensee, MCLM, was able to offer a sufficient number of licenses with a coverage area that could satisfy Amtrak's requirements over the Northeast Corridor.

Remaining Secondary Market alternatives are not sufficient to meet all of Amtrak's Northeast Corridor Requirements

- With MCLM's licenses tied up in hearing and/or bankruptcy proceedings and unlikely to be available on an unencumbered basis for some time, Amtrak is again seeking through an RFP to satisfy some of its requirements in the secondary market.
- At this time, Amtrak will need to reach acceptable purchase agreements with some combination of as many as EIGHT remaining licensees from among:
    - Access 220
    - Philip Adler
    - NRTC
    - Cornerstone SMR
    - The Warren Havens group of licensees
    - BizCom
    - ComTran
    - Tuchman&Brown

  None of these entities holds licenses that can provide even a majority of the coverage required by Amtrak

Secondary Market Transactions impose particular difficulties for publicly funded rail carriers

- Passenger Rail Carriers are generally funded by governmental entities.
- With spectrum available in this band from the FCC that is not currently licensed (or lightly used), the public interest warrants re-allocation even if secondary market transactions could be achieved at a significant cost to the public funding agencies!

Spectrum Exists in the FCC's Inventory for Re-allocation to PTC Use

Spectrum is, or may be, available for re-allocation to the rail industry for use in PTC implementation:

1. **217-218, 219-220 MHz Band AMTS Radio Service** Although currently licensed in virtually all areas, licenses that are returned to the FCC for any reason could be made available for PTC uses.

2. **218-219 MHz Band Radio Service** Very lightly licensed and/or used in all but a handful of metropolitan areas; as much as 500 kHz is readily available for re-allocation and licensing for PTC use. All 1 MHz of spectrum is licensed in only 7 out of 734 CMAs, with only 48 licenses outstanding in the entire country.

3. **220-222 MHz Band Radio Service** like the AMTS band, although currently licensed in most areas, spectrum in some markets is still unlicensed and could be re-allocated immediately, while other licenses that are returned to the FCC for any reason could also be made available for PTC use.

The few incumbent licensees who have objected to reallocation of any of the spectrum in these bands are generally seeking to protect their pecuniary interests at the expense of the public interest. If any licensees must be relocated to other spectrum in order to accommodate reallocation, the cost of such relocation will be minimal compared to the loss of public benefit that would result from a delay in implementing PTC.

Reallocated spectrum should be licensed on a site-based, frequency coordinated basis

- The Commission does not need to auction reallocated spectrum for PTC purposes.
  - Given the public safety uses, the Commission is authorized to exempt this spectrum from auctions.
  - It would be unfair to pit publicly funded organizations against private enterprises if an auction was used to license this spectrum.
  - With limited publicly available funding resources needed to implement PTC infrastructure, it would be wasteful of those resources to require that they be spent in a spectrum auction.
- PTC does not require broad, market based licensing, but only site-based licenses that provide adequate coverage and interference protection for associated rail lines.

Passenger Rail Carriers should be given preference for any reallocated spectrum

- Given the freight carriers' existing holdings in the 220 MHz band, which should provide them with sufficient spectrum resources in all but the most congested areas, the Commission should assure that passenger rail carriers can meet their requirements from any re-allocated spectrum.
- Even a twelve-month moratorium on applications from all but passenger rail carriers will provide adequate protection for rail carrier needs, while also allowing freight carriers access to any surplus spectrum that may be available well before the December 31, 2015 deadline for PTC implementation.

Prompt Action is critical to the Rail Industry's ability to satisfy the Congressional Mandate

- The Public Notice in Docket 11-79 was an important first step in building a record on PTC requirements and ways to satisfy them.
- There is a clear consensus from the rail industry that additional spectrum allocations are needed in the 217-222 MHz band.
- It is clear that unlicensed inventory exists in these bands for reallocation, even where some incumbents may require relocation to another part of this band.
- It is incumbent upon the Commission to act quickly through rulemaking or other process to initiate the requested reallocation.