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Mr. Richard Arsenault
General Counsel Wireless Telecommunications
Bureau of Wireless Telecommunications
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

25 July 2012

SUBJECT –Procurement of 220 MHz Radio-Frequency Spectrum for Positive Train Control

Dear Mr. Arsenault:

NJ TRANSIT is the State of New Jersey’s public transportation agency and operates bus, light rail, and commuter rail services within the State of New Jersey. Some operations extend into the State of New York and the Commonwealth of Pennsylvania.

The Rail Safety Improvement Act of 2008 (RSIA) requires the implementation of train control systems to provide Positive Train Control (PTC) with additional capabilities such as prevention of certain types of rail collision events, more protection for roadway workers, a Crash-Hardened Event Recorder, and interoperability with Amtrak and other freight and passenger railroads.

The FCC has advised rail operating agencies seeking 220 MHz Radio Frequency (R-F) Spectrum for Positive Train Control (required by Federal regulations) to pursue sources on the commercial market. In addition, the FCC suggested that those seeking R-F Spectrum should inform the FCC of difficulties or issues arising from efforts to obtain 220 MHz R-F Spectrum on the open market. In response to that guidance NJ TRANSIT herein is summarizing its 220 MHz R-F Spectrum procurement and the bids which, to date, are unresponsive. This bid process has left NJ TRANSIT likely unable to procure the necessary 220 MHz spectrum required to support the PTC program.

We have found that the market for this segment of the Spectrum is influenced by the small number of licensees who possess transmission rights in the geographic area where it is needed. Competition in availability and pricing is therefore quite limited because NJ TRANSIT can only acquire this unique “electronic real estate” from an entity that presently holds the license in the specific locations that serve NJ TRANSIT rail corridors.

NJ TRANSIT requests that the FCC step in and provide the necessary 220 MHz spectrum to support the PTC program.

NJ TRANSIT’s actions to identify and acquire R-F Spectrum are described below.

BACKGROUND:

The FRA requires that NJ TRANSIT implement Positive Train Control (PTC) on all of its commuter rail lines as well as be interoperable with Amtrak, Metro-North Railroad, and freight operators, by the statutory deadline of December 31, 2015. The acquisition of 220 MHz Radio-Frequency Spectrum is essential to interoperable PTC radio communications among railroads, and thereby fulfilling these regulatory requirements.

Consequently, NJ TRANSIT is compelled to acquire this specialized portion of the Radio-Frequency Spectrum for its PTC system. Similarly, every commuter rail, intercity rail and freight railroad operator requires R-F Spectrum for their respective PTC systems. In all cases the use and allocation of R-F Spectrum occurs under the auspices of the FCC.

PROCUREMENT ACTION TO ACQUIRE 220 MHz RADIO-FREQUENCY SPECTRUM (April 2011 to Present):

- 1) To identify sources and prospective offerors an "Expression of Interest" (EOI) for PTC 220 MHz R-F Spectrum was advertised on 3 April 2011. Five current 220 MHz R-F Spectrum license holders responded:
 - Maritime Communications / Land Mobile LLC (MC/LM)
 - Intelligent Transportation & Monitoring Wireless LLC/Environmental LLC/Skybridge Spectrum Foundation ("SkyTel")
 - Americom Network, Inc.
 - GEO Command, Inc.
 - Southeastern Pennsylvania Transportation Authority (SEPTA),

Another license-holder of R-F Spectrum, PTC 220, LLC was also sent the EOI and they chose not to respond.

- 2) Invitation for Bid (IFB) 12-028 was publicly advertised on 23 February 12. A two-step bid process was adopted, Step 1 was to seek existing license holders who could offer the specified R-F Spectrum and provide evidence of compliance with NJ TRANSIT requirements; and then for Step 2, invite "qualified" respondents to submit price proposals. At this point, NJ TRANSIT is still attempting to complete "Step 1", to confirm whether or not respondents can be approved for Step 2.

The IFB was also sent directly to all of the entities listed above. (Additionally, the IFB was sent to PTC 220, LLC; however, this entity informed NJ TRANSIT that it was declining to bid.

- 3) The following firms responded by the deadline 25 March 12:
- Maritime Communications / Land Mobile LLC (MC/LM)
 - Intelligent Transportation & Monitoring Wireless LLC/Environmental LLC/Skybridge Spectrum Foundation (“SkyTel”)
- 4) NJ TRANSIT then evaluated the two Proposals, which claim to possess the specified frequency spectrum. However, the result was unclear to NJ TRANSIT whether either entity has legal authority to transfer the licenses; and furthermore that any subsequent NJ TRANSIT use of those licenses will not interfere or conflict with the transmission rights of the other party (who possesses the “non-acquired “ licenses).

These two current licensees are in a spectrum conflict, each claiming that the other has violated FCC rules and should have their licenses revoked. A recent FCC action against Skybridge shows that the FCC may not be accepting the waiver of construction. MCLM is currently a Debtor-in-Possession and has a complaint by Skybridge to the FCC that MCLM is unfit to be a license holder. So even if the technical elements of the responses are acceptable to NJ TRANSIT, the legal implications of the resolution of their cases may have negative implications for acquisition and subsequent use of the frequencies and channels. Compounding the uncertainty, NJ TRANSIT has no ability to ascertain the length of time required for resolution of the legal proceedings between the two parties, nor the potential effects on current license-holder transfer rights.

NJ TRANSIT’s EVALUATION and AWARD DILEMMA:

Simply, our current technical analysis of these two proposals is cannot address the legal and practical implications of these complex offerings due to their conflicting content, and qualifying and limiting legal statements that pervade their submissions. NJ TRANSIT’s reviewers emphasized that legal clarification of “FCC issues” was required to determine the validity of either offer. Therefore without some subsequent clarification from an “FCC legal perspective” neither bidder can be invited to proceed to Step 2 – the bid price submission. As a result the award process cannot be advanced to completion.

REQUEST FOR ASSISTANCE:

To determine that either one or both offers are viable, NJ TRANSIT needs assurance that any legal settlement between the two parties will not impact NJ TRANSIT’s acquisition or approved use of the 220 MHz R-F Spectrum, and that each party has proper FCC authority to transfer those rights to another user. As our outside counsel has stated:

“It is possible that NJ TRANSIT could have found itself in a more convoluted, contested spectrum band, but I would be hard-pressed to think of one. The bottom line is that both proposals involve significant risk factors. The risks are not related to the FCC’s technical requirements but to a very complex spectrum landscape and the decade-long dispute between the parties related to this spectrum.”

NJ TRANSIT was encouraged to provide this information by the FCC. We would appreciate the opportunity to discuss this situation with respect to 220 MHz R-F Spectrum with the FCC. Perhaps the FCC could enlighten NJ TRANSIT regarding the availability of 220 MHz R-F Spectrum from the two responding entities or suggest an approach that would enable NJ TRANSIT to progress this federally-mandated acquisition.

NJ TRANSIT looks forward to hearing from you at your earliest convenience. I can be contacted at 973.491.8530 or pstangas@njtransit.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Stangas", with a long horizontal line extending to the right.

Paul K. Stangas

Director, Systems Engineering & Design

CC:

Ty Dickerson

J. Batey IV

T. Olivieri

K. Worton, DAG

APTA

Amtrak

Metro North Railroad

Long Island Rail Road

Federal Railroad Administration