

October 29, 2010

VIA ECFS

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

**Re: WT Docket No. 10-83; ULS File Nos. 0004153701 and 0004144435
Pending Applications of Southern California Regional Rail Authority**

Dear Ms. Dortch:

PTC-220, LLC (“PTC-220”)¹ submitted comments in the above-referenced proceeding on April 28, 2010, urging the Commission to expeditiously grant the pending applications (the “Applications”) for license modification and assignment of AMTS spectrum to the Southern California Regional Rail Authority (“SCRRA”). PTC-220 is concerned that, six months later, there has been no apparent action on the Applications, despite the compelling public need for the prompt deployment of positive train control (“PTC”) technology in the Los Angeles Basin area.

As explained in our April comments, the Los Angeles Basin is a high priority for the deployment of PTC. Two PTC-220 members have already commenced construction of physical PTC infrastructure in the area, after having announced a goal to initiate PTC service there by the end of 2012, three years in advance of the December 31, 2015 deadline required by the Rail Safety Improvement Act (“RSIA”). Because of the density of rail traffic in the area, PTC-220 hopes to combine its 220 MHz spectrum (through reciprocal leasing or other arrangements) with the AMTS spectrum that SCRRA is attempting to acquire to form a consolidated “pool” of PTC frequencies that will maximize channelization flexibility and achieve greater spectral efficiency. As the Administrator of the Federal Railroad Administration (“FRA”) correctly informed the Commission in April:

[PTC-220’s] spectrum is insufficient to support both these freight railroads’ operations as well as SCRRA passenger/commuter operations. Consequently, it is necessary for SCRRA to purchase additional spectrum access rights. Their failure to obtain the necessary spectrum will preclude their ability to comply with the statutory deployment and interoperability requirements of Public Law 110-432.²

¹ PTC-220’s members represent the nation’s four largest freight railroads: BNSF, CSX, Norfolk Southern and Union Pacific.

² Letter from Joseph Szabo, Administrator, Federal Railroad Administration, to Ruth Milkman, Chief, Wireless Telecommunications Bureau (Apr. 16, 2010) at 2.

The importance of prompt deployment of PTC in the Los Angeles Basin area is widely recognized. In addition to PTC-220 and the FRA, the Applications received strong support from the Riverside County Board of Supervisors (5th District), the Ventura County Transportation Commission, and the Los Angeles County Board of Supervisors (4th District). Any insensitivity to the urgent need for spectrum by SCRRRA would be especially surprising, given that one of SCRRRA's Metrolink commuter trains was involved in a widely publicized 2008 accident, killing 25 and injuring scores of others, that prompted Congress to pass the RSIA. Not surprisingly, SCRRRA has been among the most proactive commuter railroads in embracing PTC, announcing a goal of having PTC operational on all of its Metrolink rolling stock by the end of 2012,³ consistent with the plans of PTC-220 members in that area. PTC systems of the type required by the RSIA are complex, never-before-tried undertakings that cannot be implemented without time-intensive planning and testing. Continued delay in obtaining approval of the Applications seriously threatens SCRRRA's ability to meet the announced deadline, which is now barely two years away.

PTC-220 recognizes the Commission's need to give appropriate consideration to the one Petition to Deny (the "Petition") filed against the Applications, which is based on allegations involving past conduct of the current licensee of the spectrum, Maritime Communications / Land Mobile, LLC ("MCLM"). However, the Commission should be careful not to allow any delay to occur as a result of the repeated filing of untimely "supplements" and "further supplements" to the Petition. No party should be allowed to hold important public safety-related communications needs hostage while it airs its grievances against another party at the Commission.

Based on information contained in the Petition, PTC-220 understands that the Commission sent letters of inquiry to MCLM in August 2009 and again in February 2010, apparently seeking information relevant to MCLM's participation in Auction 61.⁴ If the Commission still remains unable to determine whether MCLM violated any rules, it should not continue to withhold action on the Applications. The risk to the public's safety created by further delay justifies a departure from the Commission's apparent plans to withhold action on the Applications pending resolution of the ongoing investigation MCLM.⁵

Moreover, granting the Applications would not prevent the Commission from imposing effective penalties against MCLM if it later determines that MCLM is liable for any violations. First, the Commission would retain its authority to impose a monetary forfeiture of up to \$1.5 million.⁶ Second, it is important to consider that SCRRRA seeks the assignment, through

³ See *id.* (SCRRRA "is aggressively pursuing implementation strategies to meet an earlier deployment deadline of 2012").

⁴ See Petition to Deny, and In the Alternative Section 1.41 Request of Warren Havens *et al.*, File Nos. 0004153701 and 0004144435 (filed April 28, 2010) at 40-41.

⁵ See Southern California Regional Rail Authority, Motion for Conditional Grant, WC Docket No. 10-83 (Oct. 25, 2010) at 2 (noting SCRRRA's understanding that processing of the Applications "has been halted in order to allow the Enforcement Bureau to complete an investigation of allegations regarding MCLM").

⁶ 47 C.F.R. § 1.80(b)(2) (statutory maximum for common carrier licensees).

partitioning of call sign WQGF318, of spectrum covering only six counties in California. After partitioning, MCLM would continue to hold the remainder of the four AMTS licenses it obtained in Auction 61, covering large swaths of the country. Thus, the vast majority of MCLM's license acquisitions from Auction 61 – indeed, nearly 90% based on licensed pops – would still remain subject to potential license revocation or other Commission sanctions.⁷

* * *

For the reasons demonstrated above, the public interest considerations in this case militate strongly in favor of granting the Applications immediately so that SCRRA, in conjunction with PTC-220 members, can implement PTC in the Los Angeles Basin area consistent with the announced schedule. Any lingering concerns regarding the past conduct of MCLM can still be effectively addressed without delaying safety improvements to the tens of thousands of commuters that rely on Metrolink every weekday.

Respectfully Submitted,

/s/ Edwin F. Kemp

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⁷ The six counties to be partitioned have a population of 19.2 million, compared to the combined population of the four licenses of 186.4 million. Moreover, in addition to the licenses it obtained in Auction No. 61, ULS shows that MCLM holds over 65 other FCC licenses.