

JAN 26 2006

Federal Communications Commission
Office of Secretary

In the Matter of:

Application for Consent to Assignment)	DA 05-3035
of License and Related Petition of)	
Association of American Railroads for)	FCC File No. 0002282007
Consolidation of Licenses into a)	
Single Nationwide Geographic License)	

**COMMENTS OF THE NATIONAL PUBLIC SAFETY
TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) presents these Comments on the petition of the Association of American Railroads (AAR) to consolidate into one national geographic "ribbon" license authorizations currently held by its individual members in the VHF and UHF bands. NPSTC believes the petition raises serious concern regarding land mobile communications policies promoting sharing among services. The breadth of the ribbon license is enormous. AAR's proposal fails to provide a detailed analysis and justification for the frequencies involved to be encompassed and the ramifications of the geographic license, particularly with regard to incumbent public safety licensees. That the proposal will foreclose sharing opportunities will be detrimental to public safety and other services under current rules.

AAR proposes to consolidate all of the site-specific licenses currently held by AAR member railroads authorized to use 91 frequency pairs in the VHF band, 160.215-161.565 MHz. These channels are dedicated to mobile radio communications. It also proposes to consolidate UHF channels, 452/457.900-452/457.96875 MHz that its members hold. These channels are used for onboard systems such as end of train devices

and remote control of mid train locomotives. These VHF and UHF frequencies are designated "LR" in Section 90.35(b) of the Commission's Rules and require the concurrence of AAR as the railroad frequency coordinator before another private land mobile radio frequency coordinator may recommend use of the frequencies.

Approximately 6,000 separate call signs covering 16,000 base stations and 170,000 mobile/portable radios are involved. The license's geographic ribbon will encompass a 95-mile zone along both sides of the rights-of-way of all operating rail lines in the United States for a total 190 miles. AAR will maintain a database of individual railroad radio station operations accessible by the Commission and recognized frequency coordinators via the Internet. The database will not be accessible by other licensees or the public.

The National Public Safety Communications Council

NPSTC serves as a resource and advocate for public safety organizations in the United States on matters relating to public safety communications. NPSTC is a federation of public safety associations dedicated to encourage and facilitate through a collective voice the implementation of the Public Safety Wireless Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policies involving public safety agencies, analyzes the ramifications of particular issues, and submits comments to governmental bodies with the objective of furthering public safety communications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications. The following thirteen organizations participate in NPSTC:

American Association of State Highway and Transportation Officials
American Radio Relay League
American Red Cross
Association of Public-Safety Communications Officials-International
Forestry Conservation Communications Association
International Association of Chiefs of Police
International Association of Emergency Managers
International Association of Fire Chiefs
International Association of Fish and Wildlife Agencies
International Municipal Signal Association
National Association of State Emergency Medical Services Officials
National Association of State Telecommunications Directors
National Association of State Foresters

Several federal agencies are liaison members of NPSTC. These include the Department of Agriculture, Department of Homeland Security (SAFECOM Program and the Federal Emergency Management Agency), Department of Commerce (National Telecommunications and Information Administration), Department of the Interior and the Department of Justice (National Institute of Justice, Communications Technology (CommTech)).

AAR Fails to Justify Such an Extensive Geographic License that will Preclude Sharing Between Services

NPSTCs' serious concern regarding AAR's proposal emanates from several factors. The first is the enormous size of the nationwide license- a 190 mile ribbon extending from any railway right of way. There is no detail analyzing how the ribbon

comports with present authorizations throughout the country in both the VHF and UHF bands nor why this amount is needed in every area of the country. The proposal also fails to detail the extent of in train radio requirements, which rely on the UHF band frequencies, and why these operations need a national geographic license and a 190 mile ribbon. Nor does the proposal elaborate how the VHF frequencies communicate with regional dispatch operational centers. AAR's proposal will culminate in eliminating any sharing opportunity by public safety and other services.

Absent detail and justification, the proposal's reference to the Commission's contour protections overstates the protection required when moving from a site based to geographic license in an environment of spectrum shortage. With a geographic license so large, the fundamentals of Part 90 requiring that licensees cooperate in selecting and using frequencies to reduce interference and make the most effective use of the authorized facilities ¹ will no longer be applicable in the LR category. AAR essentially proposes to move from a structure of exclusive frequency coordination to exclusive licensing. Its proposal contradicts the sharing obligation element of current rules.

Examining the breadth of the proposed 190 mile ribbon license from any railway right of way as the center turns from the enormous to the uncertain. Railway rights of way transgress in all directions and are not limited to a north/south and east/west grid. Entire states will be consumed. The protection afforded allows the proposal to avoid providing a technical and engineering analyses addressing adjacent and co channel

¹ Section 90.173 of the Commission's Rules, 47 C.F.R, §§ 90.173, Section 90.403(e) of the Commission's rules, 47 C.F. R. §§ 90.403(e).

licensees. It precludes examining whether any of the spectrum can be put to more efficient use- shared with other services. Core information addressing frequency use in both the VHF and UHF bands is lacking.

NPSTC believes that any realignment of land mobile frequencies, particularly one that will effectively foreclose sharing opportunities, must commence with a proponent's needs for the actual spectrum requirement to be discerned. AAR's proposal does not detail how far and how frequent VHF communications from the train take place and how these requirements differ across the country. The extent of frequency use, including loading, whether the proposed interference protection criteria protects operations while promoting efficient use and how co channel and adjacent licensees are protected are crucial factors that should be examined before removing such a sizable quantity of spectrum from the current sharing regime. Similar analysis should address the internal train communications in the UHF band. Such analysis will provide insight not only regarding the spectrum needed but the availability of sharing in these frequencies, including secondary use. NPSTC believes that the Commission should examine the AAR proposal with the objective that sharing remain available in the LR category.

NPSTC does not challenge AAR's need for critical wireless communications capability and the challenges it faces in moving to more efficient technologies. Significantly, AAR's proposal will confine the benefits flowing from the transition to more efficient technologies to railway users; the Commission's own discretion will be foreclosed. The amount of spectrum at stake currently and once the transition is complete is significant. NPSTC believes that prior to moving spectrum to an exclusive

environment where sharing is foreclosed a more detailed analysis and justification must be presented.

The Proposal Fails to Protect Incumbents

Of similar importance is the proposal's lack of detail and analysis addressing the treatment of non railway incumbent licensees and non AAR members. While asserting that it will protect incumbent operations, the proposal ignores the critical challenge of how these licensees will transition to the more efficient technologies in the context of AAR's plan. AAR's proposal to freeze non railway applications for a seven year period leaves incumbent licensees in particular peril; they will have no ability to obtain needed adjustments to their authority. The freeze is another demonstration that sharing obligations in these frequency bands will disappear.

AAR notes that 400 incumbents hold authorizations within the LR category and commits to protecting their interests. The commitment to protect an incumbent not only lacks detail but is contradicted by the proposed freeze. AAR states that the transition to more efficient technologies is challenging yet does not address how incumbents will be integrated into its nationwide license. The number of incumbents and the importance of their operations, many of which are public safety agencies, requires analysis and detail.

Two prominent public safety agencies, Placer County, California and the City of Simi Valley in Ventura County, California are among those holding authorizations within the LR category and have major railway rights of way transgressing their jurisdictions. The use by these agencies is an example of the many successful sharing circumstances LR frequencies afford under current rules but will be foreclosed under the proposal. More specifically, both agencies operate well within any 190 mile exclusive zone.

AAR's transition proposal will preclude either agency from modifying its contour to respond to differing and increasing requirements and imposes an uncertainty on their own efforts to move to more efficient technologies.

Administratively, AAR proposes that it essentially become the licensing entity for the frequencies. It will assign the site licenses for use by its members and administer the database reflecting these assignments and the operational information of its system. Access to the AAR database will be provided to only the Commission and to the frequency coordinators. Incumbent licensees and the public will not have access to information regarding individual radio systems.

The inability of licensees and others to access the database parallels the exclusive precept of AAR's proposal. As no interest will have access to the necessary information to conduct technical and engineering analysis to determine the availability of spectrum, there will be no pragmatic opportunity to share the spectrum. This will accrue to the particular detriment of incumbents who seek to pursue modification proposals.

The sharing policy that pervades land mobile communications counters isolating particular services and industries. Historically railway police and emergency services have been afforded use of public safety spectrum. The benefits, particularly in this era where interoperability is a priority, are clear. Yet AAR's proposal to move to exclusive licensing of LR frequencies runs counter to this direction promoting coordination among myriad services and industries.

AAR refers to the Commission's decision allowing 6 frequency pairs for data communications in Advanced Train Control Systems in the 900 MHz band to be

consolidated as precedent.² Six frequency pairs fall far short of the VHF and UHF frequencies at stake here. The scope of AAR's proposed nationwide exclusivity is multifold. And unlike 900 MHz, there are approximately 400 licenses held by non-railroad entities. In contrast to the 900 MHz circumstances, AAR has not demonstrated the loading and other criteria reflecting efficient use. The meaningful difference is that within the VHF and UHF LR frequencies there are significant sharing opportunities that will be foreclosed under the AAR's proposal.

The Petition Presents Procedural Defects Effecting Incumbent Licensees and is Counter to the Commission's Own Process

AAR's petition accompanies the applications of member licensees seeking to transfer their license to AAR. These applications are contingent upon the Commission granting it a national ribbon license in the VHF and UHF bands. The rights and expectations of at least 400 incumbents will be affected by AAR's proposal. The freeze on applications will preclude any incumbent from modifications to respond to increased requirements. Nor are these incumbents aware that their operations will have to comport with AAR's transition plans. In the context of a license transfer application, the Commission's Public Notice does not afford these incumbent licensees adequate notice much less protection with regard to the substantial changes AAR proposes.

Moreover, the AAR proposal presents a fundamental change to the Commission's rules; the frequencies involved will no longer be available for sharing. Additionally, there are significant questions with regard to what entities will be eligible,

² In the Matter of Petition of Association of American Railroad (AAR) for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, DA 01-359, 16 FCC Rcd 3078 (February 15, 2001)

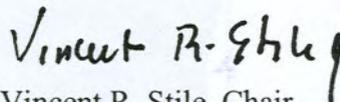
particularly non AAR members such as municipally owned light rail operations. These entities will have to depend on an entity, which while not a railroad under the Commission's rules, will control access to access to these frequencies.

The number of frequencies to be converted, the breadth of a national geographic license, the wide ranging and uncertain 190 mile ribbon, that the benefits of more efficient technologies will accrue to one service and what entities will be eligible for licenses engage the Commission's procedural requirements for rulemaking under Section 1.401 of its rules. Whatever the outcome, the precedent will be significant. The changes proposed should be examined in the context of a proceeding examining a substantial revision to the Commission's rules and not in a license transfer application.

Summary

Sharing has proven to be a valuable resource for public safety agencies. NPSTC believes that AAR's petition for a national geographic ribbon license of LR category VHF and UHF band frequencies raises serious concern deserving of more thorough detail and examination. At stake is whether these frequencies will continue to be available on a reasonable basis for sharing opportunities by other services, including public safety, and whether the rights and expectations of incumbents are adequately protected.

Respectfully submitted,



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Certification

The necessary copies of the Comments of the National Public Safety Telecommunications Council were submitted to the Secretary of the Commission at its offsite facility. A copy of the Comments was sent via the United States Postal Service, First Class Mail to:

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