

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

In the Matter of)
)
 ASSOCIATION OF AMERICAN RAILROADS) FCC File Nos. 0002282007 et al.
)
 Applications for Consent to Assignment of)
 Licenses and Petition for Consolidation of)
 Licenses into a Nationwide Geographic License)

ORDER

Adopted: January 29, 2007

Released: January 29, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On September 9, 2005, the Association of American Railroads (AAR), a non-profit organization representing the U.S. railroad industry, filed a petition to consolidate all of the site-specific licenses currently held by AAR member railroads authorizing use of frequencies 160.215-161.565 MHz and 452/457.900-452/457.96875 MHz (*i.e.*, frequencies designated “LR” in Section 90.35(b) of the Commission’s Rules¹) into a single geographic area license to be held by AAR.² For the reasons set forth below, we deny AAR’s Petition and will dismiss the associated assignment applications.

2. *Background.* Until 1997, industrial and land transportation private land mobile radio (PLMR) frequencies below 512 MHz³ were divided among thirteen separate radio services, including the Railroad Radio Service.⁴ In its *Refarming* proceeding, the Commission consolidated the thirteen services into the Industrial/Business (I/B) Pool, concluding that this would increase flexibility and spectrum efficiency by giving users access to a larger pool of frequencies; enhance the use of advanced technologies, such as trunking; and reduce administrative and financial burdens on applicants by eliminating the need to go through interservice sharing procedures.⁵ The Commission generally authorized the frequency coordinators of the services consolidated into the I/B Pool to coordinate use of any frequency within the pool, essentially ending exclusivity of frequency coordination for the I/B Pool frequencies.⁶ However, in recognition of the fact that some users in the I/B Pool utilize the service to respond to emergencies that could be extremely dangerous to the general public,⁷ the Commission

¹ 47 C.F.R. § 90.35(b).

² Petition for Consolidation of Licenses, filed by Association of American Railroads on September 9, 2005 (Petition).

³ In general, the 30-50 MHz, 150-174 MHz, 421-430 MHz, 450-470 MHz and 470-512 MHz bands. *See* 47 C.F.R. § 90.35(b)(3).

⁴ *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14311 ¶ 6 (1997) (*Refarming Second R&O*).

⁵ *Id.* at 14317 ¶¶ 18-19.

⁶ *Id.* at 14328 ¶ 40.

⁷ *Id.* at 14328-30 ¶ 41.

This reflects that the major US railroads in and via AAR, improperly sought massive amounts of VHF spectrum, which they did not need, and to the detriment of the core public safety entities and interests of the nation. Having failed at this, some of their core members, formed PTC 220 LLC, then obtained at low cost (for the extent of the spectrum) geographic 220 MHz spectrum nationwide sufficient for PTC-- and redundant to their already sufficient 900 MHz PTC nationwide license. These railroads seek good, cheap spectrum assets-- not that they need more spectrum for PTC at all. They use PTC as bait to seek unwarranted rule relief and boons from the FCC, in this case, by and via SCRRA. *See also* the FCC DA Order, included herewith, as to the 900 MHz PTC license obtained by railroads.

provided an extra layer of protection for safety-related communications by requiring applicants seeking to use frequencies previously allotted to the Railroad, Power, or Petroleum services to obtain concurrence from the specialized frequency coordinator for that service.⁸

3. Subsequently, to further increase the efficiency of spectrum use in the PLMR bands below 512 MHz, the Commission imposed a deadline of January 1, 2013 for licensees in the 150-174 MHz and 421-512 MHz bands to migrate from 25 kHz channels to 12.5 kHz narrowband technology.⁹ The Commission also provided that applications for new operations or expansion of existing operations must meet a spectrum efficiency standard of one voice channel per 12.5 kHz of bandwidth after January 1, 2011.¹⁰

4. Between September 9 and 20, 2005, thirteen AAR member railroads filed a total of seventy-four applications seeking Commission consent to assign approximately six thousand licenses to AAR.¹¹ Each application was accompanied by AAR's Petition¹² requesting that the site-specific licenses be consolidated into a single geographic area license for a 95-mile zone along each side of the rights-of-way of all operating rail lines in the United States.¹³ Under the proposal, AAR would continue to function as a frequency coordinator and would grant "sublicenses" to individual railroads, which would be tracked in a database accessible over the Internet to the Commission and the other frequency coordinators.¹⁴ To preserve the spectrum resources needed to enable the narrowband transition to occur, AAR also requested that the Commission suspend the filing of new applications for LR channels by non-

⁸ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 8642, 8647-48 ¶ 9 (1999); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Fifth Memorandum Opinion and Order*, PR Docket No. 92-235, 16 FCC Rcd 416, 418-19 ¶ 7 (2000) (*Refarming Fifth MO&O*); see also 47 C.F.R. § 90.175(b)(1). If a request for concurrence is denied, the reasons must be provided in writing and demonstrate that the proposed operation would have an adverse effect on safety-related communications. *Refarming Fifth MO&O*, 16 FCC Rcd at 419 ¶ 8; see also 47 C.F.R. § 90.175(b)(2).

⁹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034, 3038 ¶ 12 (2003); see also 47 C.F.R. § 90.209(b)(5).

¹⁰ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045, 25055-56 ¶ 23 (2004); see also 47 C.F.R. § 90.209(b)(6).

¹¹ See Appendix, *infra*.

¹² AAR indicates that if the consolidation request is not granted, the assignment applications will become moot and should be dismissed. See Petition at 1 n.1.

¹³ *I.e.*, the area covered by the geographic license would be 190 miles wide. *Id.* at 1, 7. To implement trunking and be exempt from monitoring requirements, AAR must obtain consent of all licensees whose service areas overlap a circle with a radius of seventy miles from the proposed base station. See 47 C.F.R. § 90.187(b)(2)(ii). AAR's request for a distance of ninety-five miles is the sum of the seventy-mile distance in Section 90.187(b)(2)(ii) of the Commission's Rules, 47 C.F.R. § 90.187(b)(2)(ii), and the twenty-five-mile service area radius in Section 90.205(d) of the Commission's Rules, 47 C.F.R. § 90.205(d). See Petition at 7.

¹⁴ Petition at 7-8. AAR represents that it would continue to provide interference protection in accordance with Commission rules and frequency coordination guidelines to the approximately four hundred licenses held by non-railroad entities operating in locations that would be encompassed by the proposed geographic license. *Id.* at 9-10.

railroad entities until January 1, 2013.¹⁵

5. On November 25, 2005, the Public Safety and Critical Infrastructure Division (PSCID)¹⁶ of the Wireless Telecommunications Bureau (Bureau) sought comment on AAR's Petition.¹⁷ Eight comments and three reply comments were filed.¹⁸ All commenters other than AAR and the Railway Association of Canada either oppose AAR's Petition or express serious concerns. In addition, the National Telecommunications and Information Administration (NTIA) submitted a letter stating that it "would accept" grant of the Petition if certain conditions were met.¹⁹

6. *Discussion.* AAR suggests that consolidation of the site-based licenses for LR channels into a single, AAR-held geographic ribbon license would provide significant benefits for the railroad industry, and thus serve the public interest because the railroad industry is an important part of the national economy and a vital component of our nation's critical infrastructure.²⁰ We conclude, however, based on the record before us, that grant of AAR's Petition would be contrary to the interests of the broader PLMR community and inconsistent with the principles adopted by the Commission the *Refarming* proceeding. Consequently, we deny the Petition and will dismiss the associated assignment applications.

7. AAR asserts that the railroad industry faces unique challenges in meeting the January 1, 2013 deadline for PLMR licensees to convert to narrowband technology, because the railroads operate what is essentially a nationwide interoperable network that cannot be shut down while the radio equipment is changed.²¹ It contends that consolidating the call signs into a single geographic license would greatly facilitate the conversion by streamlining licensing (*e.g.*, eliminating the need to file thousands of modification applications)²² and affording the railroad industry greater flexibility in

¹⁵ *Id.* at 9.

¹⁶ Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

¹⁷ *See* Wireless Telecommunications Bureau Seeks Comment on Association of American Railroads Petition for Consolidation of Licenses Held By Member Railroads Into a Nationwide Geographic Area License, *Public Notice*, 20 FCC Rcd 18887 (WTB PSCID 2005). On December 19, 2005, PSCID extended the comment and reply comment deadlines by thirty days in response to a request by the Enterprise Wireless Alliance (EWA). *See* Wireless Telecommunications Bureau Extends Comment and Reply Comment Deadlines for Association of American Railroads Petition for Consolidation of Licenses Held By Member Railroads Into a Nationwide Geographic Area License, *Public Notice*, 20 FCC Rcd 20039 (WTB PSCID 2005).

¹⁸ Comments were submitted by the Association of Public-Safety Communications Officials, International (APCO), EWA, Missouri State Highway Patrol (MSHP), the National Association of Manufacturers and MRFAC, Inc., the National Public Safety Telecommunications Council (NPSTC), Northeast Utilities Service Company (NUSCO), PCIA – the Wireless Infrastructure Association (PCIA), and the Wisconsin Department of Transportation (WisDOT). Reply Comments were submitted by AAR, EWA, and the Railway Association of Canada.

¹⁹ *See* Letter dated April 10, 2006 from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission. NTIA's concerns are as follows: First, AAR's database must be accessible to NTIA and other interested government agencies, kept up to date, and consistent with the Commission's databases, such as the Universal Licensing System. *Id.* at 1. Second, the moratorium must not decrease access to spectrum by non-railroad users after January 1, 2013. *Id.* at 1-2. Third, international coordination agreements regarding the channel plan for these frequencies should be reviewed and updated as necessary. *Id.* at 2.

²⁰ Petition at 2.

²¹ *Id.* at 5.

²² *Id.* at 6, 13.

managing the transition (*e.g.*, making it easier to shuffle channels in order to find “green space” to deploy the new narrowband network).²³ In addition, AAR states that there would be significant public safety benefits to a geographic license (*e.g.*, improvements to the safety of train operations in general and protection from radio interference).²⁴ AAR also notes that Canadian railroads are authorized under a single nationwide geographic ribbon license, share the same frequencies and technological platforms, and are required to migrate to narrowband technology; and argues that license consolidation will promote international harmonization.²⁵ Finally, AAR argues²⁶ that the instant request is consistent with the 2001 decision by the Bureau’s Public Safety and Private Wireless Division (PSPWD)²⁷ granting AAR’s petition to consolidate individual licenses on six 900 MHz channel pairs allocated for Positive Train Control (PTC) systems into a geographic ribbon license held by AAR.²⁸

8. Given the scope of the U.S. railroad network, a 190-mile wide geographic ribbon license, which commenters opposing the AAR Petition argue is excessively wide,²⁹ would assign the frequencies formerly allotted to the Railroad Radio Service to AAR throughout almost all of the continental United States.³⁰ These commenters note that the proposed moratorium would block all access to the LR channels by non-railroad entities and foreclose sharing possibilities by public safety and other services for the remainder of the narrowband transition period.³¹ It thus appears that grant of AAR’s Petition would in effect remove the LR channels from the I/B Pool, and reserve them for the exclusive use of the railroad industry. We note that the Commission, in the *Refarming* proceeding, rejected AAR’s suggestion that the Railroad Radio Service not be consolidated with any other radio service.³² Instead, the Commission concluded that the public interest would best be served by consolidating all thirteen separate services, in order to maximize spectrum efficiency.

9. We agree with NUSCO and EWA that the proposed geographic area license is directly at odds with the fundamental principle of shared spectrum use in the PLMR bands below 512 MHz.³³ AAR has not persuaded us that this principle should be curtailed, particularly to benefit one industry at the expense of all other PLMR licensees.³⁴ That AAR seeks such a wide area in order to minimize the number of licensees from whom AAR must obtain consent to implement exclusive trunking³⁵ is not a

²³ *Id.* at 6, 8.

²⁴ *Id.* at 11-12.

²⁵ *Id.* at 13.

²⁶ *Id.* at 7.

²⁷ The Commission reorganized the Bureau effective November 13, 2003, and the relevant duties of PSPWD were assumed by PSCID. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414 (2003).

²⁸ Petition of Association of American Railroads for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, 16 FCC Rcd 3078 (WTB PSPWD 2001) (*PTC Order*).

²⁹ EWA Comments at 3-5; NPSTC Comments at 3-4; PCIA Comments at 13; APCO Comments at 2.

³⁰ EWA observes that the license would cover virtually all populated areas of the country, extend well into rural areas that are far removed from any type of rail service, and intrude into international waterways. EWA Comments at 5.

³¹ WisDOT Comments at 1; APCO Comments at 3; MSHP Comments at 1; NPSTC Comments at 6; NUSCO Comments at 3-5, 7, 9; PCIA Comments at 5, 8-9, 12; EWA Comments at 7.

³² *See Refarming Second R&O*, 12 FCC Rcd at 14315 ¶ 13.

³³ EWA Comments at 7; NUSCO Comments at 5.

³⁴ NUSCO Comments at 10; NPSTC Comments at 1.

³⁵ AAR Reply Comments at 2-3, 11-12. *See* 47 C.F.R. § 90.187(b)(2).

sufficient basis for revisiting decisions made in the *Refarming* proceeding.³⁶

10. Finally, we agree with NPSTC that the PTC geographic area license grant to AAR should be distinguished from the instant request.³⁷ The 900 MHz PTC frequencies are not in the *Refarming* frequency bands, so grant of the PTC request did not conflict with the Commission's decisions in that proceeding. Moreover, the instant request is of significantly greater scope³⁸ and lacks an important feature of the PTC geographic license grant that permits non-railroad use of the PTC channels if the proposed operations do not threaten rail safety.³⁹ We also note that the PTC request was supported by the Federal Railroad Administration,⁴⁰ while NTIA states only that it "would accept" grant of the AAR Petition.

11. *Conclusion.* While we do not doubt the challenges that the railroad industry faces in meeting the narrowbanding deadline, we do not believe that implementing AAR's geographic area license proposal serves the PLMR community as a whole. We believe that preserving the shared use of the LR frequencies for all eligible users outweighs the benefits that would be conferred upon the railroad industry by a geographic area license and associated moratorium. Therefore, we deny the AAR Petition.

12. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Petition for Consolidation of Licenses filed by the Association of American Railroads on September 9, 2005, IS DENIED, and the applications listed in the Appendix SHALL BE DISMISSED.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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³⁶ Moreover, commenters observe, because AAR's concurrence already is required for non-railroad use of the LR channels, *see* para. 2, *supra*, AAR will be able to accomplish the same objective of the moratorium by means of case-by-case denials of coordination requests of non-railroad applicants that would thwart implementation of the new railroad channel plan. *See* PCIA Comments at 10 & n.22; NUSCO Comments at 9; EWA Comments at n.13. *But see* AAR Reply Comments at 9, 15-16 (arguing that case-by-case contour analyses and case-by-case coordination denials would be administratively inefficient compared to the predetermined 95-mile zone and moratorium).

³⁷ NPSTC Comments at 7-8.

³⁸ The PTC geographic area license encompasses three hundred licenses using six channels within a 140-mile wide zone, as opposed to the instant request for consolidation of six thousand licenses using 216 channels within a 190-mile wide zone.

³⁹ *See PTC Order*, 16 FCC Rcd at 25418 ¶ 9.

⁴⁰ *See id.* at 25416 ¶ 7.

APPENDIX

Pending Assignment Applications to Be Dismissed Pursuant to this *Order*

	File Number	Assignor Name	Receipt Date
1	0002272210	Union Pacific Railroad Company	09/12/2005
2	0002272580	Union Pacific Railroad Company	09/12/2005
3	0002272627	Union Pacific Railroad Company	09/12/2005
4	0002272669	Union Pacific Railroad Company	09/12/2005
5	0002272703	Union Pacific Railroad Company	09/12/2005
6	0002272743	Union Pacific Railroad Company	09/12/2005
7	0002272757	Union Pacific Railroad Company	09/12/2005
8	0002272777	Union Pacific Railroad Company	09/12/2005
9	0002272795	Union Pacific Railroad Company	09/12/2005
10	0002272822	Union Pacific Railroad Company	09/12/2005
11	0002273279	Union Pacific Railroad Company	09/12/2005
12	0002273296	Union Pacific Railroad Company	09/12/2005
13	0002273325	Union Pacific Railroad Company	09/12/2005
14	0002273349	Union Pacific Railroad Company	09/12/2005
15	0002273366	Union Pacific Railroad Company	09/12/2005
16	0002273378	Union Pacific Railroad Company	09/12/2005
17	0002273384	Union Pacific Railroad Company	09/12/2005
18	0002273525	Union Pacific Railroad Company	09/12/2005
19	0002273532	Union Pacific Railroad Company	09/12/2005
20	0002273539	CSX Transportation, Inc.	09/09/2005
21	0002273563	Union Pacific Railroad Company	09/12/2005
22	0002273576	Union Pacific Railroad Company	09/12/2005
23	0002273599	CSX Transportation, Inc.	09/09/2005
24	0002274100	Union Pacific Railroad Company	09/12/2005
25	0002274109	Union Pacific Railroad Company	09/13/2005
26	0002274650	Union Pacific Railroad Company	09/13/2005
27	0002275442	Union Pacific Railroad Company	09/13/2005
28	0002275454	Union Pacific Railroad Company	09/13/2005
29	0002275464	Union Pacific Railroad Company	09/13/2005
30	0002275506	Union Pacific Railroad Company	09/13/2005
31	0002275865	Union Pacific Railroad Company	09/13/2005
32	0002275890	Union Pacific Railroad Company	09/13/2005
33	0002275948	Union Pacific Railroad Company	09/13/2005
34	0002275981	Union Pacific Railroad Company	09/13/2005
35	0002276006	Union Pacific Railroad Company	09/13/2005
36	0002276016	Union Pacific Railroad Company	09/13/2005
37	0002276041	Union Pacific Railroad Company	09/13/2005

38	0002276104	Union Pacific Railroad Company	09/13/2005
39	0002276128	Union Pacific Railroad Company	09/13/2005
40	0002276351	Union Pacific Railroad Company	09/13/2005
41	0002276376	Union Pacific Railroad Company	09/13/2005
42	0002276392	Union Pacific Railroad Company	09/13/2005
43	0002276415	Union Pacific Railroad Company	09/13/2005
44	0002276430	Union Pacific Railroad Company	09/13/2005
45	0002276484	Union Pacific Railroad Company	09/13/2005
46	0002276503	Union Pacific Railroad Company	09/13/2005
47	0002282005	Alabama Great Southern Railway Company	09/09/2005
48	0002282007	Central of Georgia Railroad Company	09/09/2005
49	0002282010	The Cincinnati, New Orleans and Texas Pacific	09/09/2005
50	0002282012	Georgia Southern and Florida Railway Company	09/09/2005
51	0002282599	Norfolk Southern Railway Company	09/09/2005
52	0002283068	Norfolk Southern Railway Company	09/12/2005
53	0002283594	CSX Transportation, Inc.	09/09/2005
54	0002283645	CSX Transportation, Inc.	09/09/2005
55	0002283743	CSX Transportation, Inc.	09/13/2005
56	0002284678	Norfolk Southern Railway Company	09/09/2005
57	0002291365	Wisconsin Central System	09/12/2005
58	0002291485	Grand Trunk Western Railroad	09/12/2005
59	0002292160	Illinois Central Railroad Company	09/12/2005
60	0002294865	CSX Transportation, Inc.	09/13/2005
61	0002298956	BNSF Railway Co.	09/20/2005
62	0002300813	CSX Transportation, Inc.	09/13/2005
63	0002300911	CSX Transportation, Inc.	09/13/2005
64	0002301188	BNSF Railway Co.	09/13/2005
65	0002301279	BNSF Railway Co.	09/14/2005
66	0002301290	BNSF Railway Co.	09/14/2005
67	0002304655	BNSF Railway Co.	09/13/2005
68	0002306090	BNSF Railway Co.	09/14/2005
69	0002306346	Delaware and Hudson Railway	09/09/2005
70	0002306362	Soo Systems Radio Communications Corporation	09/09/2005
71	0002306582	BNSF Railway Co.	09/14/2005
72	0002307443	BNSF Railway Co.	09/14/2005
73	0002313138	Norfolk Southern Railway Company	09/19/2005
74	0002315670	Norfolk Southern Railway Company	09/19/2005