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November 14, 2013

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: DA 13-1980
WT Docket 13-240

To Whom It May Concern:

The Massachusetts Bay Transportation Authority ("MBTA") hereby submits its Comments on the above-captioned proceeding.¹ The Massachusetts Bay Transportation Authority is a subdivision of the Commonwealth of Massachusetts formed in 1964 to finance and operate bus, subway, commuter rail and ferry systems in the greater Boston, Massachusetts area. A contract operator provides operations and maintenance for the MBTA's Commuter Rail Service. The MBTA's Commuter Rail system is the fifth-busiest commuter rail system in the country. MBTA provides service as far south as Providence, Rhode Island, and as far north as Newburyport, MA, and as far west as Worcester, and Fitchburg, Massachusetts. The trains have two terminal stops in Boston (South Station and North Station). Both transportation hubs offer connections to Amtrak, local bus and subway lines. The MBTA is a dynamic commuter railroad that plans to expand in the future to accommodate increasing demand for passenger rail services in the greater Boston area.

Positive Train Control ("PTC") is a system of functional requirements for monitoring and controlling train movements to provide increased safety. The primary characteristics of PTC systems are: Train separation or collision avoidance; Line speed enforcement; Temporary speed restrictions; and Rail worker wayside safety. The main concept behind PTC is that the train receives constantly updated information about its location and speed, and where it is allowed to safely travel. Equipment onboard the train processes this information and prevents the train from being operated in an unsafe manner. PTC will thus safeguard human life and property by preventing injuries, hazardous material spills, and property damage caused by preventable train collisions and over-speed derailments.

¹ 78 FR 65308 (Oct. 31, 2013).

On October 16, 2008, the President signed into law the Rail Safety Improvement Act of 2008² (“RSIA”), which included provisions requiring most freight and passenger rail lines to implement PTC no later than December 31, 2015. To implement the RSIA, the Federal Railroad Administration (“FRA”) published regulations for PTC systems on January 15, 2010³, and published amended PTC regulations on December 11, 2012. Upon publication of the regulations, the rail industry worked diligently with suppliers to develop appropriate software and test various system components in order to deploy PTC.

COMMENTS

A. NHPA Section 106

Section 106 of the National Historic Preservation Act of 1966⁴ (“NHPA”) calls for a review of every federal “undertaking” to consider the effects on historic properties. As PTC systems involve the use of radio spectrum that is regulated by the Federal Communications Commission (“FCC”), the erection of towers or poles to support PTC antennas is considered an “undertaking” under the NHPA. The Advisory Council on Historic Preservation (“ACHP”) has been tasked with overseeing, and issuing guidelines for the Section 106 Review process.

Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for eligibility on the National Register. Upon submission of a proposed PTC tower or pole site, the FCC must identify the appropriate State Historic Preservation Officer (“SHPO”) and Tribal Historic Preservation Officer (“THPO”) to consult with during the process, and ensure that the public and any other potential consulting parties have an opportunity to get involved in the Section 106 Review process.⁵

B. The PTC Project is a Critical for Public Safety and Should be Implemented as Quickly as Possible.

The MBTA urges the Commission to develop rules that while meeting the requirements of Section 106 of the NHPA, would also ensure that this critical public safety project is not unnecessarily delayed nor is it burdened by a review process that adds significant time and expense without adding significant value. The MBTA is concerned that a historic review and consultation process that is focused on minutia such as the location, height and installation process for utility poles will unnecessarily delay implementation of this project without resulting in added benefits or protections for historic resources.

² P.L. 110-432 (2008).

³ See 75 F.R. 2598 (2010).

⁴ 16 U.S.C. §470f.

⁵ See 36 C.F.R. §800.14(a), (e).

Several other transit and railroad agencies as well as the American Public Transportation Association (APTA) have issued more specific comments on the potential for complicated and extracted review to delay this project. We urge the Commission to consider those comments seriously. The MBTA urges the Commission to develop a review process proposed which would seek to develop an efficient, practical, and timely review process that ensures full consideration of the effects of PTC facilities on historic properties, including Tribal religious and cultural sites.

C. Request for County-wide Batch Application Processing

The current Section 106 Review process calls for the filing of a new application for each proposed site. With so many varied interests represented in this process, including: the FCC, the rail applicant, relevant SHPOs, any interested tribes or THPOs, local government officials, the ACHP, the National Parks Service, and any other individuals or organizations with a demonstrated interest in the undertaking, there is a substantial likelihood that the same or similar conflicts will arise with many of the sites under review. By reducing the number of total applications under consideration, the stakeholders can have their concerns addressed in a more effective manner rather than rehashing the same issue every time it arises for a similarly situated undertaking.

D. Special Considerations for Right-of-Way Construction

The MBTA respectfully requests that special consideration be given to construction within the limits of the existing rail rights-of-way ("ROW"). MBTA's rail lines are located almost exclusively in urban and metropolitan areas. The ROWs along MBTA's lines have been excavated repeatedly over the years. There are underground utilities running throughout most of MBTA's ROWs. Additionally, most of MBTA's rail lines are built on top of fill material, not previously undisturbed ground. Given that the ground under MBTA's ROWs are not virgin soil, there exists no reasonable cause to perform any archeological analysis or review of proposed ROW construction, and the MBTA respectfully requests that such components be fully considered when making any determination on archeological sensitivity prior to requiring extensive research and analysis from being performed.

E. Utility Poles and PTC Poles

The ROWs of MBTA's rail lines are replete with above ground utility poles. These poles are used to hold power and telephone lines, and other ancillary equipment used by the utilities and the rail line. MBTA respectfully requests that new wayside pole placements up to sixty feet (60') in height be determined to have a *de minimus* effect on any above ground resource or in the alternative, the Commission should make a Section 106 Determination of Effect of *No Historic*

Properties Effected for all utility poles, and as such, no additional assessment of effects and mitigation would be required.

F. Special Consideration Sought for Fold-Down Pole Siting

In the event the aforementioned request for a *de minimus* determination or a *No Historic Properties Effected* Determination is rejected, MBTA respectfully requests consideration of an alternate *de minimus* determination for the installation and use of “fold-down” poles that are no taller than forty feet (40’) in height. Installation of fold-down poles requires far less excavation than that required for a traditional utility or wayside pole, and occupy a smaller overall footprint. When soil conditions permit, installation of the fold-down poles is accomplished by use of a helical base such that the pole is literally screwed into the ground, often without the need for any excavation whatsoever. Such installations also minimize the disturbance of surrounding ground and soil.

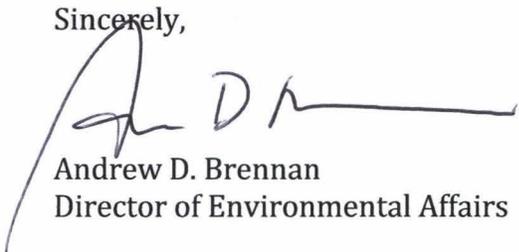
The 40’ poles will be virtually indistinguishable from all of the existing infrastructure already lining the rail tracks throughout MBTA’s system, and should thus provide no marked change in the visual characteristics of the area and therefore no visual impact on historic properties.

CONCLUSION

The timely implementation of the federally mandated PTC systems is a critical concern for the MBTA and urges the Commission to develop Section 106 standards and guidelines that will allow the program to be implemented as expeditiously as possible. The accommodations described herein are reasonable and prudent, and will serve to make the Section 106 Review process fairer, more efficient, and more cost effective for all parties involved. It is requested that the Commission carefully consider the foregoing Comments when it engages the various stakeholders in the Section 106 process in an effort to develop a new Program Comment to govern the review of PTC wayside facilities.

If you have any additional questions regarding these comments, please do not hesitate to contact me at 617-222-3126 or by email at abrennan@mbta.com.

Sincerely,



Andrew D. Brennan
Director of Environmental Affairs