

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Modification of Part 90 of the Commission's)
Rules to Enable Railroad Police to Access) RM-11721
Frequencies Reserved for Public Safety)
Interoperability)

COMMENTS
OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The American Short Line and Regional Railroad Association (“ASLRRA”) appreciates this opportunity to provide comments in response to the Public Notice (DA 14-747) released on May 30, 2014. That Public Notice solicited comments on a Petition for Rulemaking (“Petition”) filed by the National Public Safety Telecommunications Council (“NPSTC”), which requests that the Commission initiate a rulemaking proceeding to consider amending Sections 90.20, 90.523, and 90.617 of the Commission’s rules to enable railroad police to be eligible to license and operate on public safety interoperability frequencies.

ASLRRA is a non-profit trade association that represents the interests of its 450 short line and regional railroad members in legislative and regulatory matters. Short line and regional railroads are an important and growing component of the railroad industry. Today, short line and regional railroads operate and maintain 30 percent of the American Railroad industry’s route mileage, and account for 9 percent of the rail industry’s freight revenue and 12 percent of railroad employment. Many of these short line and regional railroads, and all of the Class I railroads¹ and Amtrak, have railroad police departments and employ railroad police officers to

protect: employees, passengers, and patrons of the rail carrier; property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier; property moving in interstate or foreign commerce in the possession of the rail carrier; and, personnel, equipment, and material moving by rail that are vital to the national defense. All railroad police officers are commissioned or certified as a law enforcement officer under the laws of a state, to the same or similar standards as any state, county, or local municipal police officer. Railroad police officers, in the performance of their duties, are empowered to enforce state laws and local ordinances, including having the power of arrest, like any other state, county, or local municipal police officer.

In 1993, recognizing the critical law enforcement role that railroad police officers portend to the safety and security of the nation's rail infrastructure, the United States Congress enacted, *inter alia*, Section 26101 of Public Law 103-272, 108 Stat. 939, which provided for law enforcement (police) authority for railroad police officers certified or commission in any one state in any other state where the rail carrier has property. In 2007, the United States Congress enacted the *Implementing Recommendations of the 9/11 Commission Act of 2007*, Public Law 110-53, 121. Stat. 452, which set forth, *inter alia*, at Section 1513, thereof, the intent of Congress that the Secretary of the Department of Transportation oversee grants to railroads to obtain "... communications equipment... that is interoperable with Federal, State, and local agencies and tribal governments." Thus, the United States Congress has made abundantly clear the indispensable working partnership and interrelationship between railroad police officers and federal, state, and local law enforcement officers and the Congress' perceived need for public safety interoperability communication capability between all of these law enforcement and emergency responder agencies.

¹ The Class I railroads are: BNSF Railway Company, CSX Transportation Inc., Kansas City Southern Railway Company, Union Pacific Railway Company, Canadian National Railway Company, and Canadian Pacific Railway Company.

In an emergency situation along railroad right-of-way, the need for effective and expeditions communications interoperability between railroad police and members of local and state law enforcement, fire and emergency medical personnel is just as essential as any emergency situation which might occur in any municipality. The fact that railroad police officers are not compensated by a state, county, or local municipal government should make no difference as to whether railroad police officers should have the ability to have emergency interoperability communications with emergency responders from federal, state, and local law enforcement or emergency response agencies. Indeed, many municipalities contract out their fire protection and emergency medical response services to private entities, but the private entities are eligible to utilize Part 90 public safety frequencies for communications interoperability because the emergency service is being provided under the umbrella of a government agency. Likewise, while railroad police officers may not be employed and compensated by a government agency, railroad police officers have been certified or commission by the State as a police officer authorized to enforce the laws of the state to the same extent as any other state, county, or local municipal police officer.

Lastly, while the NPSTC Petition has suggested that use of public safety interoperability channels by railroad police officers should be restricted to “full time” railroad police officers, such a restriction is imprudent. In an emergency situation, a law enforcement agency or emergency responder agency will utilize all available man power resources. Such is also true of a railroad police agency. To suggest that, in an emergency or disaster, a part time railroad police officer cannot assist would constitute gross malfeasance by the railroad police agency. A

railroad police officer – like any other police officer – whether full time or part time – is still a police officer.

ASLRRA urges that the Commission amend Section 90.20 of the Commission's Rules, by inserting a subsection (a)(3) to include, as Public Safety Pool eligibles:

“Any Class I, II, or III rail carrier, as those terms are defined at 49 C.F.R. § 1201, and Amtrak, for use by its railroad police officers for public safety interoperability communications essential to the law enforcement activities of the rail carrier.”

And, to amend Section 90.523 of the Commission's Rules, by inserting a new subsection (b) and renumbering the existing subsection (b) and subsequent subparagraphs, as follows:

“(b) *Rail Carriers.* Any Class I, II, or III rail carrier, as those terms are defined at 49 C.F.R. § 1201, and Amtrak, for use by its railroad police officers for public safety interoperability communications essential to the law enforcement activities of the rail carrier.”

ASLRRA sees no need to amend Section 90.617 of the Commission's Rules, as that rule makes reference to the definitions set forth at Section 90.20.

The Commission's consideration of these Comments is appreciated.

DATED this 30th day of **JUNE, 2014.**

Respectfully Submitted,

AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

By: *Keith T. Borman*
Keith T. Borman
Vice President and General Counsel
50 F Street, N.W., Suite 7020
Washington, DC 20001
Telephone: (202) 585-3448
E-mail: kborman@aslrra.org