



PUBLIC NOTICE

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DA 10-556
Released: March 29, 2010

**MARITIME COMMUNICATIONS/LAND MOBILE LLC AND SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY FILE APPLICATIONS TO MODIFY LICENSE AND ASSIGN
SPECTRUM FOR POSITIVE TRAIN CONTROL USE, AND REQUEST PART 80 WAIVERS**

PLEADING CYCLE ESTABLISHED

WT Docket No. 10-83

Petition to Deny/Comments Due: April 28, 2010

Oppositions/Reply Comments Due: May 10, 2010

Replies to Oppositions: May 17, 2010

The Wireless Telecommunications Bureau has received applications filed by Maritime Communications/Land Mobile, LLC (MC/LM) and Southern California Regional Rail Authority (SCRRA) relating to the license for Automated Maritime Telecommunications System (AMTS) station WQGF318.¹ The first is an application filed by MC/LM to modify the license for station WQGF318 by changing the regulatory status of a geographically partitioned portion of the license area from commercial mobile radio service (CMRS) to private mobile radio service (PMRS) (modification application).² The second is an application filed by MC/LM and SCRRA to assign that partitioned portion of the WQGF318 license area to SCRRA, accompanied by a request for waiver of several Part 80 Rules, to permit SCRRA to use the spectrum for positive train control (assignment application).³

¹ AMTS stations traditionally provide automated ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels. See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991). In recent years, the Commission has amended its Part 80 Rules to provide AMTS licensees with the flexibility to provide service to units on land, both CMRS and PMRS. See generally *In the Matter of MariTEL, Inc. and Mobex Network Services, LLC*, WT Docket No. 04-257, *Report and Order*, 22 FCC Rcd 8971 (2007).

² FCC File No. 0004153701 (filed Mar. 8, 2010). WQGF318 is the geographic license for AMTS frequency block A in the Southern Pacific market (AMT006).

³ FCC File No. 0004144435 (filed Mar. 11, 2010).

In the modification application, MC/LM seeks Commission authority to change the regulatory status of the portion of the license to be partitioned,⁴ from CMRS to PMRS, as a prerequisite to SCRRA's use of the spectrum for positive train control.⁵ AMTS stations are presumptively classified as CMRS providers,⁶ but geographic AMTS licensees are permitted to file applications to modify the regulatory status to PMRS if they include a certification of intent to provide PMRS that is sufficient to overcome the CMRS presumption.⁷ MC/LM provides a Section 20.9(b) certification as an exhibit to the modification application.⁸

As noted, the assignment application requests Commission authority to geographically partition the license area covered by the station WGQF318 license, and assign the partitioned portion of the license to SCRRA. SCRRA is a joint powers governmental agency formed to develop a regional transit service to reduce congestion on highways and improve mobility throughout the Southern California region.⁹ It operates the Metrolink commuter rail service in Southern California. Currently, Metrolink operates seven separate train lines serving 55 train stations, and has 512 operating route miles of track. On an average weekday, Metrolink serves over 40,000 riders, and runs 149 trains.¹⁰

The parties state that the grant of these applications would serve the public interest in promoting rail traffic safety by providing SCRRA with spectrum necessary to implement positive train control in

⁴ The partitioned service area that is to be modified and assigned to SCRRA consists of the entirety of six California counties: Los Angeles County, Orange County, Riverside County, San Bernardino County, San Diego County, and Ventura County.

⁵ Positive train control systems (PTCS) use onboard radio devices to automatically monitor a train's speed, location and related data within the train's authorized travel area. In practice, a radio device transmits data to a network operations center, which uses this information to manage track congestion, supervise "movement authorities," enforce speed limits, monitor and report train diagnostics, and issue alarms. PTCS also check track side (or "wayside") communications points for data regarding broken rails, proper switch alignment and signals, and can then use this information to calculate locomotive speed and braking requirements. Further, PTCS can warn a locomotive engineer to reduce speed and, if the warning is not heeded, the system can remotely brake the locomotive, potentially avoiding an accident. See, e.g., Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules, *Memorandum Opinion and Order*, WT Docket No. 08-256, 24 FCC Rcd 8537, 8538 ¶ 3 (WTB 2009). On October 16, 2008, Congress enacted the Rail Safety Improvement Act, which requires the railroad industry to deploy PTCS by December 31, 2015. See Rail Safety Improvement Act, P.L. 110-432, 122 Stat. 4848, 4856-57 § 104(a).

⁶ See 47 C.F.R. § 20.9(a)(5).

⁷ See 47 C.F.R. § 20.9(b)-(b)(1). Section 20.9(b)(1) provides in relevant part that an "applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer ... service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3."

⁸ Under Section 20.9(b)(2) of the Rules, 47 C.F.R. § 20.9(b)(2), interested parties may file a petition to deny the modification application within thirty days after the date of public notice announcing the acceptance for filing of the application. In the interest of efficiency, we have established a consolidated pleading cycle that provides thirty days from the date of this *Public Notice* for petitions to deny, or comments regarding, the assignment application as well as, or in addition to, the modification application.

⁹ See Description of Proposed Modification and Public Interest Statement, attached to the modification application, (Modification Application Public Interest Statement) at 1; Description of Transaction and Public Interest Statement, attached to the assignment application (Assignment Application Public Interest Statement) at 1.

¹⁰ Modification Application Public Interest Statement at 1; Assignment Application Public Interest Statement at 1.

connection with Metrolink service.¹¹ They note that SCRRA is subject to the December 31, 2015 statutory deadline for deploying positive train control,¹² but that SCRRA “is aggressively pursuing an implementation strategy to meet an earlier deadline of 2012.”¹³ They further note that SCRRA needs spectrum in the working range of the 220 MHz band so that its positive train control system can be interoperable with the other major rail operators in Southern California, and that SCRRA has determined, after “conduct[ing] extensive spectrum research ... [that] the only viable option was to purchase a partitioned portion of an existing AMTS geographic-area license.”¹⁴

In conjunction with the assignment application, SCRRA is requesting waivers of several Part 80 rules to facilitate the use of these AMTS frequencies for positive train control.¹⁵ Specifically, SCRRA requests that the Commission waive Sections 80.92(a) (listen-before-talk requirement), 80.102(a) (station identification requirement), 80.105 (requirement that coast station acknowledge and receive all calls directed to it by ship or aircraft stations), 80.123 (requirement to give priority to marine communications, and other operational and technical requirements for coast stations), 80.215(h)(5)(i) (ship stations transmitter output power and effective radiated power limits), 80.385(a)(2) (AMTS frequency assignments), 80.475(c) (requirement that AMTS systems provide private mobile radio service only to stations whose licensees make cooperative arrangements with the AMTS coast station licensee), and 80.479(c) (requirement that “all affected licensees” provide written consent for mobile-to-mobile communications).¹⁶ SCRRA asserts that grant of the requested waivers is warranted under Section 1.925 of the Commission’s Rules¹⁷ because there are unique and special circumstances surrounding SCRRA’s spectrum requirements to provide positive train control,¹⁸ and grant of the requested waivers would serve the public interest and be consistent with Commission precedent.¹⁹ According to SCRRA, grant of the waivers would not harm maritime users of the spectrum, AMTS licensees, or broadcasters.²⁰ SCRRA

¹¹ See, e.g., Assignment Application Public Interest Statement at 2. SCRRA attaches its own Section 20.9(b) certification to the assignment application.

¹² See note 5, *supra*.

¹³ See Assignment Application Public Interest Statement at 2.

¹⁴ *Id.* at 2-3. AMTS is allocated spectrum in the 217 MHz and 219 MHz frequency bands. SCRRA says it recognizes that the original purpose of the AMTS spectrum allocation was to provide service to maritime users. It adds, however, that “repurposing this limited amount of spectrum to non-maritime use will not harm maritime users in Southern California, since, as demonstrated in the Waiver Request attached to this assignment application, there are many other maritime licensees operating in that area that can serve them.” *Id.* at 3.

¹⁵ See Request for Waivers, attached as an exhibit to the assignment application.

¹⁶ See 47 C.F.R. §§ 80.92(a), 80.102(a), 80.105, 80.123, 80.215(h)(5)(i), 80.385(a)(2), 80.475(c), 80.479(c).

¹⁷ See 47 C.F.R. § 1.925(b)(3) (providing that the Commission may grant a request for waiver if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative).

¹⁸ See Request for Waivers at 4-5.

¹⁹ *Id.* at 5-9.

²⁰ *Id.* at 9-14.

adds that grant of the waivers would advance the Commission's spectrum efficiency and flexible use goals.²¹

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,²² the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.²³

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.²⁴ More than a one- or two-sentence description of the views and arguments presented is generally required.²⁵ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.²⁶ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.²⁷

Interested parties must file comments or petitions to deny no later than **April 28, 2010**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding. Replies or oppositions to comments and petitions must be filed no later than **May 10, 2010**. Replies to oppositions must be filed no later than **May 17, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-556** and **WT Docket No. 10-83**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

²¹ *Id.* at 14.

²² 47 C.F.R. § 1.1200(a).

²³ *Id.* § 1.1206.

²⁴ See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

²⁵ See 47 C.F.R. § 1.1206(b)(2).

²⁶ *Id.* § 1.1206(b).

²⁷ See 47 U.S.C. § 309(b).

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Jeff Tobias, (202) 418-1617, jeff.tobias@fcc.gov.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

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