

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

In the Matter of)	
)	
Intelligent Transportation & Monitoring Wireless LLC, Assignor)	
)	File No. 0010322233
PTC-220, LLC, Assignee)	
)	
Application to Partially Assign Licenses for AMTS Station WQGF310)	
)	
and)	
)	
Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, V2G LLC)	EB Docket No. 11-71
)	

ORDER

Adopted: October 3, 2023

Released: October 3, 2023

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have an application before us to assign, through partitioning and disaggregation, portions of the license for Automated Maritime Telecommunications System (AMTS) station WQGF310 (AMT001 – Northern Atlantic) from Intelligent Transportation & Monitoring Wireless LLC (ITMW) to PTC-220, LLC (PTC-220).¹ This Application was placed on an Accepted for Filing Public Notice (AFF PN) on January 11, 2023.² Warren Havens (Havens) filed a Petition to Deny or Dismiss the Application (Petition) and a Motion for Summary Decision (Motion) on February 10, 2023, and February 28, 2023, respectively.³ PTC-220 filed an Opposition to Petition to Deny on February 21, 2023.⁴ Subsequent to

¹ FCC File No. 0010322233 (filed Jan. 5, 2023) (Application).

² See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted For Filing*, Report No. 17408, at 1 (WTB rel. Jan. 11, 2023), <https://docs.fcc.gov/public/attachments/DOC-390576A1.pdf>.

³ Petition to Deny or Dismiss of Warren Havens, File No. 0010322233 (filed Feb. 10, 2023); Motion for Summary Decision of Warren Havens, File No. 0010322233, (filed Feb. 28, 2023).

⁴ Opposition to Petition to Deny of PTC-220, File No. 0010322233 (filed Feb. 21, 2023). Havens subsequently filed short and long versions of his Reply to the Opposition on February 28, 2023, an Erratum of the short Reply to the Opposition on March 1, 2023, and a “Havens Skybridge” memo, which includes his other filings, on March 2, 2023. See ULS File No. 0010322233, PTC-220, LLC, Pleadings, <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applAdminPleadings.jsp?applID=13755579>.

these filings, Havens died on June 27, 2023.⁵ We therefore consider Havens's pleadings as of the time they were filed. We conclude that the Petition and Motion were untimely filed and that Havens lacked standing to challenge the Application and, therefore, we dismiss the Petition and the Motion. For the reasons stated below, we grant the Application and PTC-220's associated request for waiver of certain part 80 rules to facilitate use of the spectrum for implementation of positive train control (PTC) and related non-PTC rail safety systems.⁶

II. BACKGROUND

2. By this Application, ITMW, through a court-appointed receiver authorized to sell licenses by court order, and PTC-220 seek Commission consent to the partition and disaggregation of AMTS station WQGF310.⁷ PTC-220 is seeking to acquire frequencies from 219.5-219.575 MHz in three counties in New York, and frequencies from 219.5-219.975 MHz in 40 counties in New York, New Jersey, and Pennsylvania.⁸ The Application notes that PTC-220 previously acquired other frequencies originally associated with WQGF310 in three separate transactions.⁹

3. ITMW is one of several entities originally controlled by Havens and founded to hold various Commission licenses. However, after a lawsuit brought by a former partner of Havens, Dr. Arnold Leong, regarding their respective ownership interests and the conduct of various partnerships in the Superior Court of Alameda County, California (Court), the Court entered an order, on November 16, 2015, appointing Susan L. Uecker (Receiver) as Receiver to take control of all of Havens's license-holding entities, including ITMW.¹⁰ In early 2016, the Commission accepted applications filed by the Receiver to involuntarily transfer control of these licenses to the Receiver, pursuant to the court order, and no timely petition for reconsideration of these acceptances was filed.¹¹ Further details about this litigation and the appointment and powers of the Receiver are available in the Wireless Telecommunications Bureau's (Bureau) decision rejecting Havens's various petitions challenging Leong's qualifications to hold Commission licenses and the appointment of the Receiver, and granting a petition for declaratory ruling, filed by Leong, to remove uncertainty about the Receiver's ability to effectuate the assignments of licenses to third parties in order to distribute the proceeds in accordance with the court's judgment.¹²

⁵ In Section III.B below, we address certain conditions that had been imposed on Havens concerning his participation in Commission proceedings.

⁶ Application, Request for Waivers for AMTS Spectrum to be Assigned from Call Sign WQGF310, ULS File No. 0010322233 (Jan. 5, 2023) (Waiver Request).

⁷ Application, Description of the Transaction and Public Interest Statement, at 1 (Public Interest Statement).

⁸ Application, Authorizations to be Assigned.

⁹ Public Interest Statement at 1 (citing ULS File Nos. 0007586525, 0007703434, 0007780828).

¹⁰ See *Arnold Leong v. Warrens Havens, et al.*, Case No. 2002-070640, *Order Appointing Receiver After Hearing and Preliminary Injunction* (Nov. 16, 2015), *aff'd*, Case No. A147027, 2017 WL 3633282 (Cal. Ct. App. Aug. 23, 2017). After the California Court of Appeal affirmed the Court's order appointing the Receiver to take control of these entities, and the Supreme Court of California denied review, the Court's decision that the Receiver should control the entities became final. See *Leong v. Havens*, Case Nos. A149113 *et al.*, 2019 WL 5557524, at *2 (Cal. Ct. App. Oct. 23, 2019).

¹¹ See ULS File Nos. 0007060862, 0007060898, 0007061808, 0007061828, 0007061847, 0007061898 (all filed Dec. 17, 2015). No petition for reconsideration was filed within the statutorily mandated 30-day period beginning with public notice of the acceptance of the applications, therefore, the Commission's action is administratively final. See 47 U.S.C. § 405. Havens, however, has filed numerous pleadings collaterally attacking the acceptance of the applications. A non-exhaustive list of the pleadings is available at <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdminPleadings.jsp?applID=9367669>.

¹² See *Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, V2G LLC*, EB Docket No. 11-71,

(continued....)

4. PTC-220 is a consortium of the nation’s seven largest Class I freight railroads formed to acquire and manage spectrum to implement congressionally mandated PTC.¹³ PTC systems are designed to reduce the risk of human-error rail accidents by “prevent[ing] train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.”¹⁴

5. PTC-220 explains that the railroads’ original network was designed to have only a single nationwide “Common Channel,” used by all locomotive radios.¹⁵ However, it states, congestion on the Common Channel occurs in many busy areas of the country, resulting in many communications from the PTC base station not getting through, and the solution that was developed—“Robust Common Channel” (RCC)—requires two additional channels designated as common channels. PTC-220 further explains that in many areas of the country, its 220 MHz spectrum holdings are insufficient to deploy RCC’s additional two common channels, and it has therefore sought to acquire AMTS 219 MHz spectrum which, it states, “is uniquely suited for expanding network capacity due to its adjacency to the 220 MHz band.”¹⁶ PTC-220 has acquired 219 MHz spectrum in six AMTS regions thus far, providing its members AMTS spectrum coverage across much of the country;¹⁷ however, it states that certain areas, including counties in New Jersey, New York, and Pennsylvania (AMTS Region 1), “remain as holes in PTC-220’s 219 MHz footprint.”¹⁸ Hence, it now seeks to acquire AMTS Region 1 spectrum from ITMW. The applicants add that PTC-220, as an FCC licensee, has demonstrated that it is qualified to hold Commission licenses.¹⁹

6. PTC-220 states that its member railroads will initially use the assigned AMTS spectrum “to implement a more robust channel plan . . . to improve PTC reliability.”²⁰ In addition, PTC-220 states that the railroads will be able to “leverage AMTS spectrum to: (1) satisfy the capacity demands for expanded PTC deployment onto non-mandatory lines; (2) support other, related train safety applications,

Memorandum Opinion and Order, 37 FCC Rcd 4731 (WTB 2022) (*Receiver Order*). Pursuant to the Court’s judgment, these proceeds are to be distributed between Leong and Havens. We previously ordered that any proceeds intended for Havens be placed into escrow pending the resolution of the Commission’s assessment of Havens’s character qualifications to be a licensee. *See id.* at 4746, para. 34. In view of Havens’s death, we revisit that condition below.

¹³ *See* Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), *amended by* Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015). PTC-220’s member railroads are: BNSF Railway Company, Canadian National Railway Company, Canadian Pacific Railway Company, CSX Corporation, Kansas City Southern, Norfolk Southern Corporation, and Union Pacific Corporation. U.S. railroads are designated as Class I, II, or III, according to annual revenue criteria.

¹⁴ *See* 49 U.S.C. § 20157(i)(5). The U.S. rail industry chose to implement PTC through wireless networks that use radio spectrum. These networks have the capacity to enable real-time information sharing between trains, rail wayside devices, and back office applications, regarding train movement authorities, speed restrictions, train position and speed, and the state of signal and switch devices. To implement PTC, PTC-220 has acquired spectrum both in the 220 MHz Band and, as it is seeking to do here, in the adjacent AMTS Band. PTC-220 also leases its spectrum to numerous other railroads, including passenger and commuter railroads, to enable their PTC implementation.

¹⁵ Waiver Request at 2.

¹⁶ *Id.* at 3.

¹⁷ The AMTS band includes two spectrum blocks in 10 geographic license areas. *See* 47 CFR § 80.385 (frequencies for AMTS systems). Through prior acquisitions, PTC-220 holds spectrum in AMTS Regions 2, 3, 4, 5, 6, and 10. Waiver Request at 1.

¹⁸ Waiver Request at 3.

¹⁹ Public Interest Statement at 1.

²⁰ Waiver Request at 2.

including End of Train (EOT) devices²¹ and distributed power systems;²² and (3) support future safety-related functions, such as improvements to grade crossing equipment.”²³ As discussed further below, PTC-220 seeks waivers of certain part 80 rules which, it argues, are “inapplicable to [PTC], a private land mobile data radio system.”²⁴

III. DISCUSSION

A. Assignment Application

7. *Timeliness.* We find that Havens’s Petition was untimely filed and otherwise procedurally deficient. On January 11, 2023, the Application appeared on an Accepted for Filing Public Notice (AFF PN). Interested parties had 14 days after the release of the AFF PN to file petitions to deny,²⁵ with Petitions due no later than January 25, 2023. Havens filed his Petition on February 10, 2023 and presented no justification for the late-filing. Additionally, we treat the Motion, which was also late-filed on February 21, 2023, as a supplement to the petition to deny. Accordingly, we dismiss the Petition and Motion as untimely.

8. *Standing.* Further, we find that Havens lacked standing to pursue his Petition and Motion at the time he filed them, and we therefore do not address his arguments on the merits. Commission precedent clearly establishes that, to demonstrate party-in-interest standing, a petitioner to deny an application must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.²⁶ For these purposes, the injury must be concrete and particularized and also actual or imminent, not conjectural or hypothetical.²⁷ In addition, a petitioner must demonstrate a causal

²¹ EOT deployments “typically consist of two units – one located at the rear of the train, which transmits the brake line air pressure information to the locomotive, and one at the front of the train, where the locomotive engineer receives such information.” *Id.* at 4. PTC-220 explains that “[t]he radio link enables the engineer to apply the brakes from both ends of the train simultaneously in an emergency[,] which ensures that the entire train applies all of its brakes in an emergency, thus stopping the train faster and more safely.” *Id.* See also *infra* note 22.

²² Distributed power systems involve “placing one or more locomotives within or at the end of a train to reduce in-train stresses related to braking and pulling.” *Id.* at 5. PTC-220 explains that railroads currently use 450 MHz band spectrum for both EOT deployments and distributed power systems, but have found that as trains have become longer, this spectrum does not provide a reliable radio link, and when the link is broken, “the two locomotives can lose synchronization, creating potential stresses at the connecting knuckles and increasing the risk that the train will separate.” *Id.* PTC-220 seeks AMTS spectrum, “which has superior propagation characteristics compared to 450 MHz infrastructure,” to provide reliable radio links for these vital safety systems. *Id.*

²³ Waiver Request at 2.

²⁴ *Id.* at 1. The Commission originally intended that AMTS stations would be used to provide service to tugs, barges, and other commercial maritime vessels. *Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System along the Mississippi River and Connecting Waterways*, GEN Docket No. 80-1, Report and Order, 84 F.C.C.2d 875 (1981). The Commission amended the AMTS rules in 1997 to permit AMTS stations to serve fixed, mobile, and handheld units on land. *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Second Report and Order*, 12 FCC Rcd 16949, 16964-65 paras. 24-25 (1997) (*AMTS Second Report and Order*). It now licenses AMTS stations by geographic area. *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685, 6696, para. 24 (2002). Incumbent site-based stations are grandfathered and are entitled to protection from a geographic licensee. See *id.* at 6699-701, paras. 30-35; 47 CFR § 80.773.

²⁵ 47 CFR §§ 1.939, 1.948(j)(1)(iii).

²⁶ See *Wireless Co., L.P., et al.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

²⁷ *Conference Group, LLC v. FCC*, 720 F.3d 956 (D.C. Cir. 2013), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (*Lujan*).

link between the claimed injury and the challenged action.²⁸ To demonstrate a causal link, the petitioner must establish that the injury can be traced to the challenged action and the injury would be prevented or redressed by the relief requested.²⁹ It is the petitioner's burden to make the necessary showings.³⁰

9. Here, Havens did not satisfy his burden under the standard set forth above. He did not allege facts sufficient to show that he would have suffered a direct injury as a result of grant of the Application, or explain why denying the Application would have prevented or redressed any such injury. Significantly, Havens no longer controlled the licenses at issue in the Application at the time he filed his Petition. Both the Court's decision appointing the Receiver and the FCC's decision to allow involuntary transfer of the licenses to the Receiver had become final.³¹ Under the circumstances, it is not apparent (and Havens did not explain) why granting the Application here to partially assign the license for WQGF310 from ITMW (an entity Havens did not control) to PTC-220 (a different entity Havens did not control) would have injured Havens.³²

10. Insofar as Havens collaterally attacked the judicial and regulatory proceedings that resulted in the Receiver's acquiring control of the licenses that Havens formerly controlled, we are not empowered to review those already final determinations here.³³ And, in any event, as the agency has suggested in other contexts, "untimely challenges to actions in other proceedings" cannot "form the basis for a cognizable injury directly caused from [a] grant" of the Application here.³⁴

11. Havens also mentioned pleadings that he filed in other regulatory proceedings before the FCC. In these pleadings, he argued that he had standing to file on behalf of the entities he formerly controlled. These allegations were fully addressed in an order dismissing petitions that Havens filed challenging a separate transaction to assign partial licenses from a formerly-controlled Havens company to a third party.³⁵ For all of these reasons, in addition to dismissing the Petition as untimely filed, we dismiss Havens's Petition for lack of standing. Independently, we have reviewed the Application and conclude that grant of the Application will serve the public interest. Specifically, we find that the assignment of this AMTS license from ITMW to PTC-220 furthers the public interest because it will facilitate use of the spectrum for implementation of PTC and non-PTC rail safety systems in AMTS Region 1, both for PTC-220 member freight railroads and also for passenger and commuter railroads, which may access the newly assigned spectrum resources from PTC-220 via spectrum lease. Granting the Application therefore also serves the Commission's core policy goals of promoting the safety of life and property.³⁶

²⁸ *Wireless Co.*, 10 FCC Rcd at 13235, para. 7.

²⁹ *Id.*

³⁰ See *T-Mobile License LLC*, 29 FCC Rcd 6350, 6355, para. 12 (2014); see also *Lujan*, 504 U.S. at 561 (explaining that, in the parallel context of a party invoking federal judicial jurisdiction, "[t]he party invoking . . . jurisdiction bears the burden of establishing [the] elements" of standing).

³¹ See *supra* para. 3 and notes 10, 11.

³² Cf. *Kapur v. FCC*, 991 F.3d 193, 197 (D.C. Cir. 2021) (petitioners lacked standing when, even if they prevailed on all claims, they would at best wind up minority owners of a license-holding entity, without power to prevent an equivalent license transfer in the future).

³³ See, e.g., Petition at 26-27, 29, 31-34.

³⁴ *Choctaw Holdings LLC*, Order, 33 FCC Rcd 1783, 1787, para. 16 (WTB MD 2018) (*Choctaw*), *recon. pending*.

³⁵ *Verde Systems, LLC, Assignor, WEC Business Solutions, LLC, Assignee, Application to Assign the Licenses for AMTS Stations WQCP808 and WQCP815*, Order, DA 23-215, 2023 WL 2559888, at *3, paras. 8-11 (WTB MD Mar. 14, 2023) (*Verde/WEC Order*).

³⁶ See 47 U.S.C. § 151 (establishing the Commission for the "purpose of promoting safety of life and property through the use of wire and radio communications").

B. Conditions Related to Havens Character Inquiry

12. In the *Receiver Order* rejecting Havens's various petitions challenging Leong's qualifications to hold Commission licenses and the appointment of the Receiver, the Bureau ordered that each transaction involving the licenses of former Havens-controlled entities would be conditioned to ensure that Havens would play no role in the operation of, nor derive any monetary benefit from, the sale of the licenses, pending the resolution of the Enforcement Bureau's assessment of his character qualifications.³⁷ Specifically, the Bureau applied the following conditions to any Commission approval of a transaction involving these licenses: (1) the buyer must submit a sworn statement that Warren Havens will not be involved in the operations of the spectrum associated with the application;³⁸ (2) the Receiver must file a sworn statement attesting that any proceeds of the sale intended for Havens will go into escrow, in accordance with all applicable state and local laws, pending the resolution of the Commission's assessment of Havens's character qualifications to be a licensee; and (3) post-closing of the transaction, the Receiver must file under seal an accounting of the proceeds collected from the sale of the licenses involved.³⁹

13. As noted above, Havens passed away on June 27, 2023. It is consistent with precedent to find that, with his death, there is no regulatory purpose to an examination of his character and qualifications.⁴⁰ Further, we have been informed by the Enforcement Bureau that the investigation into Havens's character qualifications has been closed and no adverse findings have been made about Havens's character. Therefore, the above conditions are moot, and we will not place these conditions on the licenses in this and future transactions, and we remove these conditions from previously approved transactions.⁴¹

C. PTC-220 Waiver Request

14. We now turn to PTC-220's's Waiver Request, which seeks waiver of the following part 80 rules:

- Section 80.92(a), which requires licensees to monitor a frequency before transmitting;⁴²
- Section 80.105, which requires coast stations to receive calls from ship and aircraft

³⁷ *Receiver Order*, 37 FCC Rcd at 4731, 4745-46, paras. 2, 32-35. The Commission had previously ordered a separated staff within the Enforcement Bureau to conduct an inquiry into Havens's character qualifications in view of his misconduct in a hearing proceeding in which Havens was a party. *See Maritime Communications/Land Mobile LLC*, EB Docket 11-71, Memorandum Opinion and Order, 33 FCC Rcd 11,822, 11,848-49, para. 88 (2018).

³⁸ *Receiver Order*, 37 FCC Rcd at 4745-46, para. 32 (noting, however, that based on the record in that proceeding, it appeared Havens would not play a role in the operation of the licenses).

³⁹ *Id.* at 4746, para. 34.

⁴⁰ *See, e.g., Federal Broadcasting System, Inc., For Renewal of License and Involuntary Transfer of Control of Station WSAY Rochester, New York; Niagara Broadcasting System, For Renewal of License and Involuntary Assignment of License of Station WNIA Cheektowaga, New York*, Docket Nos. 20791, 20792, Memorandum Opinion and Order, 75 F.C.C.2d 615, 619, para. 8 (FCC 1980).

⁴¹ *Verde/WEC Order*, *supra* note 35; Application of Verde Systems LLC and Pacific Gas and Electric Company, File No. 0010611959 (filed Aug. 16, 2023); Application of Environmental-2 LLC and Pacific Gas and Electric Company, File No. 0010611982 (filed Aug. 16, 2023); Application of Environmental LLC and Eversource Energy Service Company, File No. 0010315252 (filed Jan. 13, 2023, amended Jan. 18, 2023); Application of Intelligent Transportation & Monitoring Wireless LLC and Eversource Energy Service Company, File No. 0010315258 (filed Jan. 13, 2023, amended Jan. 18, 2023); Application of Environmental-2 LLC and Oncor Electric Delivery Company LLC, File No. 0009970606 (filed Mar. 31, 2022, amended Apr. 12, 2022); Application of Verde Systems LLC and Oncor Electric Delivery Company LLC, File No. 0009976971 (filed Mar. 31, 2022, amended Apr. 12, 2022).

⁴² 47 CFR § 80.92(a).

stations;⁴³

- Section 80.106, which requires a coast station to receive communications from mobile stations and to transmit communications delivered to it, which are directed to mobile stations;⁴⁴
- Section 80.123(a), which requires an AMTS land station to secure a letter authorizing the land station to communicate with a coast station;⁴⁵
- Section 80.123(b), which requires coast stations to afford priority to marine-originating communications;⁴⁶
- Section 80.123(f), which provides that AMTS land stations may only communicate with coast stations;⁴⁷
- Section 80.385(a)(2), which divides the AMTS spectrum band into coast (base) station frequencies (217-218 MHz) and ship (mobile) station frequencies (219-220 MHz);⁴⁸ and
- Section 80.215(h)(5), which requires coast stations' transmitter power, as measured at the input terminals to the station antenna, to be 50 watts or less.⁴⁹

15. PTC-220 discusses each rule separately and argues, for each one, that it satisfies both prongs of the Commission's section 1.925(b)(3) waiver standard.⁵⁰ It also notes that the Bureau granted PTC-220 waivers of these same part 80 rules in 2020, in connection with an assignment of spectrum from Thomas K. Kurian (Kurian) to enable use of the AMTS frequencies for PTC as well as other rail safety (i.e., non-PTC) systems.⁵¹ PTC-220 further notes that the Bureau has granted waivers of all or most of these same part 80 rules in connection with other railroads' acquisition of spectrum,⁵² as well as in

⁴³ *Id.* § 80.105. The AMTS rules define two station classes: coast stations and ship stations. *Id.* § 80.5 (defining a coast station as a "land station in the maritime mobile service" and a ship station as a "mobile station in the maritime mobile service located on-board a vessel which is not permanently moored"). As noted above, the Commission amended the AMTS rules in 1997 to permit AMTS stations to serve fixed, mobile, and handheld units on land, in addition to marine vessels. *AMTS Second Report and Order*, 12 FCC Rcd 16949, 16964-65, paras. 24-25. The Commission regulates PTC base and wayside stations as AMTS coast stations for licensing purposes because they are both fixed stations; it regulates locomotive stations as AMTS ship stations for licensing purposes because they are mobile.

⁴⁴ 47 CFR § 80.106.

⁴⁵ *Id.* § 80.123(a).

⁴⁶ *Id.* § 80.123(b).

⁴⁷ *Id.* § 80.123(f).

⁴⁸ *Id.* § 80.385(a)(2).

⁴⁹ *Id.* § 80.215(h)(5).

⁵⁰ See Waiver Request at 7-11; 47 CFR 1.925(b)(3).

⁵¹ Waiver Request at 1, n.2 (citing *Application of Thomas K. Kurian For Partitioning and Disaggregation of License for Automated Maritime Telecommunications System Station WQCP809 to PTC-220, LLC*, Order, 35 FCC Rcd 13105 (WTB MD 2020) (*Kurian/PTC-220 Order*)).

⁵² *Id.* at 7, n.20 (citing, e.g., *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*, WT Docket No. 10-83, Order, 31 FCC Rcd 9826 (WTB 2016) (*SCRRRA 2016 Order*); *National Railroad Passenger Corporation (d/b/a Amtrak), Request for Waiver of Certain Part 80 Automated Maritime*

(continued....)

connection with granting modifications of AMTS licenses held by PTC-220 in other areas of the country.⁵³

16. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant a waiver when either (i) "[t]he 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) "[i]n 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."⁵⁴ The Commission also may waive a rule, in whole or in part, on its own motion or on petition for good cause.⁵⁵

17. As PTC-220 notes, in the Bureau's 2020 decision granting an assignment (through partitioning and disaggregation) of AMTS spectrum from Kurian to PTC-220, the Bureau waived all eight of the part 80 rules identified above to facilitate implementation of PTC and related rail safety systems.⁵⁶ Additionally, with the exception of section 80.215(h)(5), the Bureau previously issued orders waiving each of the part 80 rules identified above to enable Amtrak and the Southern California Regional Rail Authority (SCRRA) to deploy PTC using AMTS spectrum in the Northeast Rail Corridor (from New York to Washington DC) and Southern California, respectively.⁵⁷ We have evaluated the instant Waiver Request under section 1.925(b)(3) and conclude that the same reasoning that the Bureau articulated in the *Kurian/PTC-220 Order* for each of the eight rules (which mirrors the reasoning articulated for the seven part 80 rules waived in the *Amtrak 2016 Order* and *SCRRA 2015 Order*) applies equally here, and that the request for waiver satisfies at least one of the prongs of the waiver standard, if not both, for each rule. Our specific reasons with respect to each rule are discussed below.

18. We also find good cause under section 1.3 of the Commission's rules to waive the eight part 80 rules in this case.⁵⁸ We further find that, because granting PTC-220's Waiver Request will serve the public interest in rail safety, it also serves the Commission's core policy goals of promoting the safety

Telecommunications System Rules to Implement Positive Train Control, WT Docket No. 11-27, Order, 30 FCC Rcd 2038, 2041, para. 11 (WTB MD 2015) (*Amtrak 2015 Order*).

⁵³ *Id.* at 1, n.2 (citing, e.g., *PTC-220, LLC, Modification of Licenses for Automated Maritime Telecommunications System Stations WRDI936, WRDH825, WRDH826, and WRDH972*, Order, 36 FCC Rcd 18183, 18187, 18189-91, paras. 16, 20-27 (WTB MD 2021) (waiving the same eight rules for which PTC-220 seeks waiver relief here) (*PTC-220 Modification Order for WRDI936 et al.*)).

⁵⁴ 47 CFR § 1.925(b)(3).

⁵⁵ *Id.* § 1.3. Further, when the Commission amended its rules to permit AMTS stations to provide service to units on land, it stated that the following factors would be considered in evaluating requests for waiver of AMTS rules: (a) whether the applicant will provide priority to maritime communications; (b) the distance of a proposed land mobile radio operation from the nearest navigable waterways; (c) the magnitude of divergence sought from specific Part 80 technical requirements; (d) whether alternative spectrum that could accommodate the proposed private land mobile radio (PLMR) or other land mobile radio service is unavailable or unsuitable for that purpose; and (e) whether grant of the waiver would benefit public safety or homeland security (including support of critical infrastructure). *Maritel, Inc. and Mobex Network Services, LLC*, Report and Order, 22 FCC Rcd 8971, 8986-87, para. 26 (2007).

⁵⁶ *See supra* para. 15.

⁵⁷ *SCRRA 2016 Order*, 31 FCC Rcd at 9835-40, paras. 27-40 (waiving 47 CFR §§ 80.92(a), 80.105, 80.106, 80.123(a)-(c) and (f), and 80.385(a)(2), to facilitate PTC deployment); *Amtrak 2015 Order*, 30 FCC Rcd at 2040-43, paras. 8-14 (same). Moreover, as also noted by PTC-220, the Bureau has granted waivers of these part 80 rules in connection with granting modifications of AMTS licenses held by PTC-220. *See generally*, e.g., *PTC-220 Modification Order for WRDI936 et al.*, 36 FCC Rcd 18183 (waiving, to facilitate use of AMTS spectrum for both PTC and additional (non-PTC) rail safety systems, the same eight rules for which PTC-220 seeks waivers here).

⁵⁸ 47 CFR § 1.3; *Kurian/PTC-220 Order*, 35 FCC Rcd at 13117, para. 38 (citing same).

of life and property.⁵⁹ The waiver relief will only apply to use of the AMTS spectrum to deploy PTC and related rail safety systems in the defined rail corridors in AMTS Region 1 (as specified in the Application), thereby limiting the area of potential interference. Moreover, if PTC-220 assigns, partitions, disaggregates, or leases to a third party any of the spectrum to be assigned from ITMW under Station WQGF310, the waivers would only apply if that spectrum is used for PTC or related rail safety operations.

19. Section 80.92(a). We agree with PTC-220 that this rule's requirement that AMTS station operators determine that a frequency is not in use before transmitting is unnecessary for PTC systems, which operate on an exclusive-use basis in defined rail corridors.⁶⁰ As in the *Kurian/PTC-220 Order*, we find that the purpose of the rule (to avoid interference) would not be served here, and that waiving the requirement would be in the public interest by promoting rail safety and the efficient use of AMTS spectrum.⁶¹

20. Sections 80.105 and 80.123(b). The Bureau concluded in the *Kurian/PTC-220 Order* that waiver of section 80.105 is required to enable "necessary intercommunication between the various PTC system elements," and the rule's application would impair "PTC operation by interrupting critical information flow."⁶² As the Bureau also observed there, "maritime users have many options to meet their communications needs, including cellular and satellite services," and waiver of these rules "will not jeopardize the maritime community's ability to meet its operational, safety, and security communications needs."⁶³ For the same reasons articulated in that *Order*, we grant PTC-220's request for waiver of these two rules.⁶⁴

21. Section 80.106. In the *Kurian/PTC-220 Order*, the Bureau waived section 80.106 when it waived section 80.105's requirement that coast stations acknowledge and receive calls from mobile stations.⁶⁵ Consistent with that *Order*, we find that waiving section 80.106 here will promote the efficient use of AMTS spectrum and serve the public interest by improving the safety of railroad operations without jeopardizing the maritime community's ability to meet its communications needs.⁶⁶

22. Section 80.123(a). In the *Kurian/PTC-220 Order*, the Bureau found it appropriate to waive the rule's requirement that AMTS land stations secure a letter authorizing the land station to communicate with a coast station (which enables authorities to verify that a unit on land is authorized to operate on AMTS spectrum), because PTC "is configured to transmit only data[] and railroad operations take place in limited locations where the responsible party is easily identifiable."⁶⁷ Consistent with the Bureau's reasoning and findings in that case, we grant PTC-220's request for waiver of this rule.⁶⁸

⁵⁹ See *supra* note 36.

⁶⁰ See Waiver Request at 7.

⁶¹ See *Kurian/PTC-220 Order*, 35 FCC Red at 13114-15, para. 30 (citing 47 CFR § 1.925(b)(3)(i)).

⁶² See *id.* at 13115, para. 31.

⁶³ See *id.*

⁶⁴ See *id.* (finding that "strict application of sections 80.105 and 80.123(b) to PTC operations would be contrary to the public interest in rail safety," citing 47 CFR § 1.925(b)(3)(ii)).

⁶⁵ See *id.*, para. 32.

⁶⁶ See *id.* (citing 47 CFR § 1.925(b)(3)(ii) (also finding that, "considering the unique circumstances of U.S. railroads' PTC deployments, application of section 80.106 to their PTC operations would be contrary to the public interest in rail safety").

⁶⁷ See *id.* at 13115-16, para. 33.

⁶⁸ See *id.* (citing 47 CFR § 1.925(b)(3)(ii), "considering the unique circumstances U.S. railroads face in complying with the federal PTC mandate" and finding that application of section 80.123(a) to PTC operations "is unnecessary and would be unduly burdensome").

23. Section 80.123(f). The Bureau has previously found, in the *Kurian/PTC-220 Order* as well as other AMTS waiver orders, that requiring AMTS land stations to communicate only with coast stations is unnecessary for a private, internal-use only PTC system.⁶⁹ Applying the same reasoning here, consistent with those *Orders*, we find that application of section 80.123(f) to PTC and related rail safety operations would be contrary to the public interest in rail safety.⁷⁰ Accordingly, we waive this rule.

24. Section 80.385(a)(2). While this rule divides the AMTS Band into base station frequencies (217-218 MHz) and mobile station frequencies (219-220 MHz), PTC-220 explains that PTC systems rely on Time Division Duplexing (TDD), “so all three types of PTC stations (base, mobile, and wayside). . . transmit on both the base and mobile station frequencies.”⁷¹ When the Bureau granted a waiver of this rule in the *Kurian/PTC-220 Order*, it noted that the railroads’ operations would operate under the antenna height and radiated power levels permitted for AMTS stations in their limited geographic area of operations.⁷² Applying the same rationale here, as PTC-220’s PTC and related rail safety operations will likewise be in limited geographic areas and subject to the same restrictions, we conclude that a waiver of section 80.385(a)(2) is warranted.⁷³

25. Section 80.215(h)(5). Finally, we address PTC-220’s request for a limited waiver of section 80.215(h)(5), which requires coast stations’ “transmitter power, as measured at the input terminals to the station antenna, [to] be 50 watts or less.”⁷⁴ PTC-220 states that thousands of existing PTC base stations have a transmitter power output of 75 watts peak envelope power (PEP) or less.⁷⁵ It explains that because these stations have at least 0.6 dB of cable, connector, and filter insertion loss between a transmitter’s output and an antenna’s input terminals, power at the input terminals will not exceed 65 watts PEP.⁷⁶ PTC-220 therefore requests a waiver of the rule to permit up to 65 watts PEP as measured at the input terminals to a station antenna.

26. As PTC-220 explains, power at the input to antenna terminals alone does not determine whether a PTC transmitter has the potential to interfere with other licensees’ operations; rather, the level of radiated power from an antenna determines interference potential.⁷⁷ PTC-220 states that because PTC base stations generally use omnidirectional (or nearly omnidirectional) antennas, most of an antenna’s gain results from focusing the power in the vertical plane.⁷⁸ PTC-220 adds that larger antennas could produce more gain so that the same radiated power levels could be achieved with 50 watts at an antenna’s input terminal.⁷⁹ However, it asserts, in order to achieve these power levels while adhering to section 80.215(h)(5)’s 50-watt limit, railroads would have to install new, lower power transmitters and new

⁶⁹ See *id.* at 13116, para. 34.

⁷⁰ See *id.* (citing 47 CFR § 1.925(b)(3)(ii)).

⁷¹ Waiver Request at 10.

⁷² See *Kurian/PTC-220 Order*, 35 FCC Rcd at 13116, para. 35.

⁷³ See *id.* (citing 47 CFR § 1.925(b)(3)(ii) and finding that, considering the unique circumstances U.S. railroads face in complying with the federal PTC mandate, strict application of section 80.385(a)(2) would be contrary to the public interest).

⁷⁴ Waiver Request at 10-11; 47 CFR § 80.215(h)(5).

⁷⁵ Waiver Request at 10.

⁷⁶ *Id.*

⁷⁷ *Id.* at 10-11 (noting “it is the gain of the antenna and the input power that determine the magnitude, direction and breadth of the radiated power, but ultimately only radiated power can cause interference”).

⁷⁸ *Id.* at 11.

⁷⁹ *Id.*

antennas at thousands of base station sites.⁸⁰

27. Applying the same reasoning articulated by the Bureau in the *Kurian/PTC-220 Order*, we find that, under these circumstances, strict application of section 80.215(h)(5) to railroads' PTC and related rail safety operations is unnecessary and would be unduly burdensome.⁸¹ Accordingly, we waive this rule to permit operations at up to 65 watts PEP as measured at the input terminals to a base station antenna.

28. Our action today will serve the public interest in rail safety in AMTS Region 1, covering numerous counties (as specified in the Application) in New Jersey, New York, and Pennsylvania where PTC-220 lacks sufficient spectrum capacity to implement its PTC operations and additional (non-PTC) rail safety systems. In addition, we recognize that passenger and commuter railroads will likely access PTC-220's spectrum resources via spectrum lease, as Amtrak currently does within AMTS Region 1 through a 220 MHz lease agreement with PTC-220.⁸² Consequently, granting the Application to supplement PTC-220's spectrum, with the accompanying waiver relief, will benefit passenger railroads as well as the PTC-220 member freight railroads. Granting the Application and Waiver Request therefore also serves the Commission's core policy goals of promoting the safety of life and property.⁸³

IV. CONCLUSION AND ORDERING CLAUSES

29. For all the reasons discussed above, we dismiss the Petition and Motion as untimely filed and for lack of standing, and we grant the Application and the associated Waiver Request. We emphasize that the waiver relief we grant today will only apply to use of the AMTS spectrum to deploy PTC and related rail safety systems in the defined rail corridors in AMTS Region 1 (as specified in the Application), thereby limiting the area of potential interference. We also reiterate that, if PTC-220 assigns, partitions, disaggregates, or leases to a third party any of the spectrum to be assigned from ITMW under Station WQGF310, the waivers would only apply if that spectrum is used for PTC or related rail safety operations.

30. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), and sections 1.939 and 1.948(j)(1)(iii) of the Commission's rules, 47 CFR §§ 1.939, 1.948(j)(1)(iii), the Petition to Deny filed on February 10, 2023, and the Motion for Summary Decision filed on February 28, 2023, by Warren Havens, ARE DISMISSED.

31. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application filed on January 5, 2023, to assign, through partitioning and disaggregation, portions of the license for Automated Maritime Telecommunications System station WQGF310 (AMT001 – Northern Atlantic) from Intelligent Transportation & Monitoring Wireless LLC to PTC-220, LLC, FCC File Number 0010322233, IS GRANTED.

32. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, the Waiver Request filed on January 5, 2023, by PTC-220, LLC, IS GRANTED as described herein.

⁸⁰ *Id.*

⁸¹ See *Kurian/PTC-220 Order*, 35 FCC Rcd at 13117, para. 37 (citing 47 CFR § 1.925(b)(3)(ii)).

⁸² See Waiver Request at 3 (citing ULS Lease ID L000040744).

⁸³ See *supra* note 36.

33. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau