

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

In the Matter of)	
)	
Maritime Communications/Land Mobile, LLC)	WT Docket No. 10-83
and Southern California Regional Rail Authority)	
File Applications to Modify License and Assign)	File Nos. 0004144435 and 0004153701
Spectrum for Positive Train Control Use, and)	
Request Part 80 Waivers)	
)	

ORDER

Adopted: September 14, 2016

Released: September 14, 2016

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this *Order*, we grant an application—as amended June 8, 2016—to assign spectrum to the Southern California Regional Rail Authority (SCRRA)¹ to facilitate its deployment of a positive train control (PTC) system for the Metrolink commuter railroad (Metrolink). Specifically, we approve the partitioning of an area comprising Metrolink's six-county service territory,² from Automated Maritime Telecommunications System (AMTS) Station WQGF318,³ licensed to Maritime Communications/Land

¹ FCC File No. 0004144435 (filed Mar. 8, 2010, amended Oct. 20, 2015, and June 8, 2016) (Assignment Application). SCRRA is a Joint Powers Authority of five county transportation planning agencies: the Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, the Riverside County Transportation Commission, the San Bernardino Associated Governments, and the Ventura County Transportation Commission. Request for Waivers, FCC File No. 0004144435, at 2 (filed Mar. 8, 2010) (SCRRA Waiver Request).

² The six counties are: Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Description of Proposed Modification and Public Interest Statement, FCC File No. 0004153701, at 1 (filed Mar. 3, 2010) (SCRRA Public Interest Statement).

³ There are two AMTS spectrum blocks in 10 geographic license areas: Block A (217.5-218/219.5-220 MHz) and Block B (217-217.5/219-219.5 MHz). See 47 CFR § 80.385(a)(2) and (3). Station WQGF318 is the Southern Pacific (AMT006) A Block license.

Mobile, LLC (MCLM), Debtor-in-Possession, to SCRRA.⁴ We also approve SCRRA's related request for waiver of certain AMTS rules to facilitate Metrolink's PTC deployment,⁵ and we grant an application to modify the regulatory status of the AMTS spectrum for private PTC use.⁶

II. BACKGROUND

2. *SCRRA*. SCRRA oversees the Metrolink commuter railroad.⁷ Metrolink operates seven train lines serving 55 train stations on over 500 track miles.⁸ On an average weekday, Metrolink runs 165 trains and serves more than 40,000 commuters.⁹ Metrolink trains operate over rail rights-of-way owned by SCRRA member agencies,¹⁰ Burlington Northern Santa Fe Railroad, Union Pacific Railroad, and the North County Transit District (NCTD).¹¹

3. *Rail Safety Improvement Act of 2008*. Congress established the PTC mandate in the Rail Safety Improvement Act of 2008 (RSIA)¹² following a catastrophic rail accident in Chatsworth, California, where, on September 12, 2008, a Metrolink commuter train collided head-on with a Union Pacific freight train, killing 25 passengers and injuring more than 100 other passengers.¹³ The National Transportation Safety Board (NTSB) found that a Metrolink engineer failed to appropriately respond to a red signal, and that a PTC system¹⁴ would have stopped the Metrolink train short of the red signal preventing the fatal collision.¹⁵

⁴ On August 1, 2011, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss.). The Commission subsequently approved MCLM's application for the involuntary assignment of its licenses to MCLM as a debtor-in-possession, reflecting the bankruptcy filing. FCC File No. 0004851459 (filed Aug. 26, 2011). Regarding events that occurred after MCLM's bankruptcy filing, the term "MCLM" herein refers to the company as debtor-in-possession.

⁵ SCRRA Waiver Request. SCRRA filed two amendments narrowing the scope of the waiver request. *See* Minor Amendment, FCC File No. 0004144435 (filed Oct. 20, 2015) (Minor Amendment); *see also* Second Minor Amendment, FCC File No. 0004144435 (filed June 8, 2016) (Second Minor Amendment).

⁶ FCC File No. 0004153701 (filed Mar. 8, 2010, amended Aug. 30, 2011) (Modification Application). *See infra* discussion at paragraphs 41-46. We collectively refer to the Assignment Application and the Modification Application as the SCRRA Applications.

⁷ SCRRA Public Interest Statement at 1.

⁸ *See* Metrolink Fact Sheet at 1, http://www.metrolinktrains.com/pdfs/Facts&Numbers/Fact_Sheets/Fact_Sheet_2016_Q2.pdf (last visited August 16, 2016).

⁹ *Id.*

¹⁰ *See supra* note 1.

¹¹ Metrolink Fact Sheet at 1 n.1. Further information regarding the NCTD is available at <http://www.gonctd.com/nctd-overview> (last visited August 16, 2016).

¹² *See* Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), amended by the Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015).

¹³ National Transportation Safety Board, Collision of Metrolink Train 111 with Union Pacific Train LOF65-12 Chatsworth, California, Accident Report No. RAR-10/01 at vii (2010), <http://www.nts.gov/investigations/AccidentReports/Reports/RAR1001.pdf>.

¹⁴ Once implemented, 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." 49 U.S.C. § 20157(i)(5).

¹⁵ NTSB, Collision of Metrolink Train 111 with Union Pacific Train LOF65-12 Chatsworth, California, Accident Report No. RAR-10/01 at vii (2010), <http://www.nts.gov/investigations/AccidentReports/Reports/RAR1001.pdf>.

4. The RSIA requires all trains providing passenger service and freight trains operating on lines carrying toxic and poisonous-by-inhalation hazardous materials to implement interoperable¹⁶ PTC systems by December 31, 2018.¹⁷ The U.S. rail industry has chosen to implement PTC using radio spectrum that creates wireless networks with 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.

5. *SCRRA Applications.* On March 29, 2010, the Wireless Telecommunications Bureau (Bureau) issued a public notice requesting comment on the SCRRA Applications.¹⁸ The Federal Railroad Administration (FRA),¹⁹ the Los Angeles County Board of Supervisors,²⁰ PTC-220, LLC—a consortium of the nation’s Class I freight railroads²¹—the Riverside County Board of Supervisors,²² and the Ventura County Transportation Commission²³ each filed comments supporting the SCRRA Applications. Warren Havens (Havens) and five associated entities of which he is President (collectively, with Mr. Havens, the “Havens Entities”)²⁴ filed a Petition to Deny the SCRRA Applications.²⁵ The Havens Entities also filed numerous other pleadings opposing the SCRRA Applications.²⁶

¹⁶ Interoperability is defined as “the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries.” 49 U.S.C. § 20157(i)(3).

¹⁷ Congress initially established a December 31, 2015, deadline to implement PTC. *See* Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008). In October 2015, Congress extended the PTC deadline by three years, until December 31, 2018, after it became apparent that the rail industry faced challenges meeting the 2015 implementation deadline. *See* Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015). *See also* Senate Commerce Committee, Fact Sheet: Positive Train Control Extension, <https://www.commerce.senate.gov/public/index.cfm/fact-sheets?ID=D312B38B-8EC6-40E7-9ADD-DF2FACA27B48> (last visited August 16, 2016). Railroads may request up to a 24-month extension of the December 31, 2018, deadline in limited circumstances. *See* 49 U.S.C. § 20157(a)(2)(B).

¹⁸ *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*, Public Notice, 25 FCC Rcd 3171 (WTB MD 2010) (*MCLM/SCRRA Public Notice*).

¹⁹ Letter from Joseph C. Szabo, Administrator, Federal Railroad Administration, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC (Apr. 16, 2010) (on file in WT Docket No. 10-83) (FRA Letter). The FRA is responsible for overseeing PTC implementation, and adopted final PTC requirements on January 10, 2010. *See* Positive Train Control (PTC) Information (R&D), Federal Railroad Administration, <https://www.fra.dot.gov/Page/P0152> (last visited Aug. 16, 2016) (information regarding FRA’s oversight of PTC implementation).

²⁰ Letter from Don Knabe, Supervisor, Fourth District, Los Angeles County Board of Supervisors, to Marlene H. Dortch, Secretary, FCC (Apr. 19, 2010) (on file in WT Docket No. 10-83).

²¹ PTC-220 Comments, WT Docket 10-83 (filed Apr. 28, 2010). At the time, four of the nation’s Class I Railroads were members of PTC-220: Burlington Northern Santa Fe Corporation, CSX Corporation, Norfolk Southern Railway, and Union Pacific Railroad. *Id.* at 1. The three remaining U.S. Class I Railroads—Canadian National Railway, Canadian Pacific Railway, and Kansas City Southern Railway—subsequently joined PTC-220. *See also* Letter from Edwin F. Kemp, President, PTC-220, to Marlene H. Dortch, Secretary, FCC (Oct. 29, 2010) (on file in WT Docket No. 10-83).

²² Letter from Marion Ashley, Chairman, Riverside County Board of Supervisors, to Marlene H. Dortch, Secretary, FCC (Apr. 16, 2010) (on file in WT Docket No. 10-83).

²³ Letter from Darren M. Kettle, Executive Director, Ventura County Transportation Commission, to Marlene Dortch, Secretary, FCC (Apr. 20, 2010) (on file in WT Docket No. 10-83).

²⁴ The five entities are Environmental LLC (ENL), Intelligent Transportation & Monitoring Wireless LLC (ITL), Skybridge Spectrum Foundation (SSF), Telesaurus Holdings GB LLC (THL), and Verde Systems LLC (VSL).

6. Consideration of the SCRRRA Applications was impacted by the Commission's decision, on April 18, 2011, to issue an *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (HDO)*.²⁷ The *HDO* commenced a hearing before an Administrative Law Judge to determine whether MCLM has the requisite character qualifications to be a Commission licensee. Issuance of the *HDO* ordinarily would have stayed consideration of the SCRRRA Applications under the Commission's *Jefferson Radio* policy, which provides that a license may not be assigned or transferred when the licensee's qualifications to hold it are at issue.²⁸ The Commission, however, found that "the potential safety of life considerations involved in the positive train control area," warranted possible removal of the SCRRRA Applications from the hearing.²⁹ The Commission stated that it would "upon an appropriate showing by the Parties, consider whether . . . the public interest would be served by allowing" removal of the SCRRRA Applications from the hearing.³⁰ Numerous pleadings were subsequently filed regarding possible removal of the SCRRRA Applications from the hearing.³¹

7. On September 10, 2014, in the *MCLM/SCRRRA Order*,³² the Commission removed the SCRRRA Applications from the MCLM hearing finding that it "would serve the public interest by

(Continued from previous page) _____

²⁵ Petition to Deny, and in the Alternative Section 1.41 Request, ULS File Nos. 0004144435 and 0004153701 (filed Apr. 28, 2010) (Havens Petition to Deny). SCRRRA filed an Opposition to Petition to Deny on May 10, 2010, in WT Docket No. 10-83 (SCRRRA Opposition). MCLM also filed an Opposition to Petition to Deny on May 10, 2010, in ULS File No. 0004144435 and 0004153701.

On November 16, 2015, the Superior Court of Alameda County, California, issued an order appointing Susan L. Uecker (Uecker) as receiver to take control of ENL, ITL, SSF, THL, VSL, and two other entities (Environmental-2 LLC and V2G LLC). See *Arnold Leong v. Warrens Havens, et al.*, Case No. 2002-070640, Order Appointing Receiver After Hearing and Preliminary Injunction (Nov. 16, 2015). On December 17, 2015, Uecker filed several applications to notify the Commission of an involuntary transfer of control of the seven entities. See, e.g., Description of Application and Public Interest Statement, ULS File No. 0007060862 (filed Dec. 17, 2015) (citing 47 CFR § 1.948(c)(2)). The applications were accepted on February 2, 2016. On March 11, 2016, SSF filed a voluntary petition for bankruptcy under Chapter 11 with the U.S. Bankruptcy Court, Delaware District, Case No. 16-10626. The court dismissed that petition on May 6, 2016. See *Skybridge Spectrum Foundation, Debtor*, Case 16-10626-CSS, Doc 120, Order (May 6, 2016).

²⁶ See Havens Entities Reply (filed May 10, 2010); ITL, THL, and VSL Reply to Oppositions (filed May 17, 2010) (ITL/THL/VSL Reply); ENL, Havens, and SSF Reply to Oppositions (filed May 17, 2010) (ENL/Havens/SSF Reply); May 27, 2010 Supplement—New Facts, And Request to Accept, ULS File No. 0004144435 (filed May 27, 2010) (filing by the Havens Entities transmitting Errata Version of email from Mr. Havens to FCC staff, dated May 23, 2010, regarding MCLM's character qualifications); Further Statement in Support of Opposition, Notice of Pending Related Proceedings, and of Future Filings, And Suggested Resolution of Issues in Dispute, ULS File No. 0004144435 (filed July 14, 2010) (Havens Entities Further Statement); Havens Entities Initial Opposition to Motion for Conditional Grant (filed Nov. 10, 2010); Havens Entities Motion to Dismiss Motion for Conditional Grant, or in the Alternative, Opposition to Motion for Conditional Grant (filed Dec. 7, 2010); Havens Entities Reply to Oppositions to Motion to Dismiss Motion for Conditional Grant, or in the Alternative, Opposition to Motion for Conditional Grant (filed Jan. 5, 2011). Mr. Havens filed these pleadings before the Havens Entities were placed in receivership. See *supra* note 25.

²⁷ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520 (2011) (*HDO*).

²⁸ See *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

²⁹ *HDO*, 26 FCC Rcd at 6523, para. 7 n.7.

³⁰ *Id.*

³¹ These pleadings are located in WT Docket No. 13-85, EB Docket No. 11-71, and are also attached to more than 20 FCC File Nos., including 0004153701 and 0004144435.

³² *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 10871 (2014) (*MCLM/SCRRRA Order*), petition for reconsideration pending.

significantly promoting rail safety of life and property” and that the “spectrum in question is uniquely suited to enable [PTC] system interoperability as part of the frequency range that is being deployed nationwide for PTC.”³³ The Commission authorized the Bureau to grant the SCRRA Applications if it finds that a grant would be consistent with the *MCLM/SCRRA Order* and relevant Commission rules.³⁴

8. On October 20, 2015, SCRRA filed a minor amendment to the Assignment Application, which narrowed the scope of its request for waiver of certain Part 80 rules.³⁵ On June 8, 2016, SCRRA filed a second minor amendment to further narrow the scope of its waiver request.³⁶

III. DISCUSSION

9. In the *MCLM/SCRRA Order*, the Commission authorized the Bureau to grant the SCRRA Applications upon finding that such a grant would be consistent with its determinations in that order and relevant Commission rules.³⁷ Based on our careful review of the record before us, we find that grant of the SCRRA Applications will further the vital public interest in rail safety consistent with the federal PTC mandate, the *MCLM/SCRRA Order*, and relevant FCC rules as discussed below.

10. We find that only ENL, SSF, and VSL have standing to oppose the SCRRA Applications, and that there is no merit to their allegations of FCC prejudice. We find that because the Commission removed the SCRRA Applications from the hearing regarding MCLM’s character qualifications, it is unnecessary to address arguments regarding MCLM’s character qualifications here. We also reject the Havens Entities’ attempt to incorporate their pleadings and arguments from 24 other proceedings into this proceeding. Lastly, we address SCRRA’s request for waiver of certain Part 80 rules to enable PTC deployment and regulatory reclassification of the AMTS spectrum for private PTC use.

A. Standing

11. We first address whether Mr. Havens or any of the five related entities of which he is President have standing to challenge the SCRRA Applications. The Havens Entities provide no explanation in their pleadings regarding why Mr. Havens himself would have standing to challenge the SCRRA Applications, nor are we aware of any basis to afford him standing.

12. THL, which holds spectrum licenses in the 900 MHz band and not AMTS, posits it has standing to contest the SCRRA Applications because it “may offer competitive services to those that MCLM can provide with the License [Station WQGF318].”³⁸ To establish standing, a petitioner must allege facts sufficient to demonstrate that grant of an application would cause it to suffer a direct injury.³⁹ To obtain standing, a petitioner must show a causal link between the claimed injury and the challenged action, and demonstrate that the claimed injury would be prevented or redressed by the relief requested.⁴⁰ For purposes of standing, an injury must be both “concrete and particularized” and “actual or imminent,

³³ *Id.* at 10883-84, para. 31.

³⁴ *Id.* at 10888, para. 41.

³⁵ Minor Amendment.

³⁶ Second Minor Amendment.

³⁷ *MCLM/SCRRA Order*, 29 FCC Rcd at 10888, para. 41; *id.* at 10881, para. 26 (“direct[ing] the Bureau to process the applications”).

³⁸ Havens Petition to Deny at 9 & n.4.

³⁹ See *Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). See also *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002); *Touchtel Corporation*, Order on Reconsideration, 29 FCC Rcd 16249, 16250-51, para. 7 (WTB Broadband Div. 2014) (*Touchtel*).

⁴⁰ *Wireless Co.*, 10 FCC Rcd at 13235, para. 7; *Touchtel*, 29 FCC Rcd at 16250-51, para. 7.

not conjectural or hypothetical.”⁴¹ Because THL’s alleged injury rests on the provision of a service it has not commenced, the prospect of harm here is speculative. THL has not shown how it would be harmed, imminently or otherwise, by an assignment of the partitioned AMTS spectrum to SCRRA, by SCRRA’s related waiver requests, or by grant of SCRRA’s request to modify the regulatory status of the AMTS spectrum for private PTC use. Accordingly, THL lacks standing to challenge the SCRRA Applications.

13. ITL asserts standing to oppose the SCRRA Applications, arguing that it, not MCLM, should have won the Commission’s auction of the AMTS A-Block license, a portion of which MCLM seeks to partition and assign to SCRRA.⁴² ITL’s alleged injury is neither actual nor imminent. Further, ITL’s claim rests on the premise that MCLM lacked the requisite character to be a licensee at the time of the auction. In removing the SCRRA Applications from the MCLM hearing, however, the Commission determined that possible questions regarding MCLM’s fitness to be a Commission licensee are not germane for the limited purpose of processing the SCRRA Applications to enable PTC.⁴³ We therefore find that ITL lacks standing based on its claim of alleged superior spectrum rights because, even if this claim did not involve a purported injury that is neither actual nor imminent, it is founded on allegations regarding MCLM’s character fitness, which are outside the scope of this proceeding.

14. We find that SSF and VSL—which hold adjacent channel AMTS B Block licenses, Stations WQJW656 and WQCP816, in the same geographic market (AMT006) as Station WQGF318—have standing based on their assertion that grant of certain rule waivers requested by SCRRA could impact planned operations on their spectrum.⁴⁴ We also find that ENL—which holds an AMTS Mountain market area (AMT010) B Block license, Station WQCP814, the western border of which abuts the eastern border of two California counties (Riverside and San Bernardino) to be partitioned to SCRRA—has standing based on its assertion that grant of certain rule waivers requested by SCRRA could impact planned operations on its spectrum.⁴⁵

15. In summary, we find that ENL, SSF, and VSL have standing. Accordingly, any reference below to the “Havens Entities” does not confer standing on Mr. Havens, ITL, or THL.

B. Alleged Prejudice

16. We find that there is no evidence that the Havens Entities suffered prejudice by not having been afforded an additional six to nine weeks to file their Petition to Deny.⁴⁶ The petition exceeds

⁴¹ *Conference Group, LLC v. FCC*, 720 F.3d 957, 962 (D.C. Cir. 2013), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The *Lujan* Court stated that the constitutional minimum of standing requires that the plaintiff must have suffered an “injury in fact,” an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be fairly traceable to the challenged action of the defendant. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

⁴² Havens Petition to Deny at 9.

⁴³ See *MCLM/SCRRA Order*, 29 FCC Rcd at 10883-84, para. 31 (“allowing the SCRRA Applications to be addressed outside the hearing pursuant to Footnote 7 is a tailored response to a narrow and demonstrated need, involves only a limited amount of spectrum in a single geographic area, and is unlikely to undermine the deterrent to licensee misconduct posed by the *Jefferson Radio* policy”).

⁴⁴ Havens Petition to Deny at 8-9 & n.3.

⁴⁵ *Id.* at 38.

⁴⁶ *Id.* at 11. On April 22, 2010, one week before petitions to deny were due, the Havens Entities argued they needed more time to prepare their petition. See Havens Entities Motion to Extend Pleading Cycle, ULS File No. 0004144435 (filed Apr. 22, 2010). Among other things, the Havens Entities claimed that an employee’s work on the petition was hampered by an earthquake in Chile that occurred two months prior to the filing deadline. *Id.* at 8.

80 pages (excluding attachments and exhibits) and the Havens Entities later filed numerous pleadings in which they opposed the SCRRRA Applications, resulting in the extensive record before us.⁴⁷

17. There is also no support in the record for the Havens Entities' contention that Commission staff "acted with prejudice toward them with respect to their petitions and filings against MCLM and the License [*i.e.*, Station WQGF318] and [the SCRRRA] Applications."⁴⁸ The Havens Entities were not excluded from a "secret private hearing" regarding MCLM as they allege.⁴⁹ Rather, Commission staff investigated possible rule violations by MCLM.⁵⁰ That investigation led to the Commission's commencement of the formal hearing regarding MCLM's qualifications,⁵¹ and the Commission granted Mr. Havens and several related entities party status.⁵²

18. The Havens Entities also claim they "have been warned (with threats of adverse action) by both FCC staff and certain professional advisors who know the FCC from the inside, to not challenge the FCC's undefined, almost limitless discretion in the Communications Act"⁵³ The Havens Entities identify no FCC staff member who has threatened them, and cite no facts to support their conclusory accusations. To the extent that the Havens Entities believe they suffered prejudice regarding the Commission's processing of certain Freedom of Information Act (FOIA) requests,⁵⁴ our rules provide that they could have sought review of any determinations with which they disagreed.⁵⁵ Further, to the extent the Havens Entities believe they have been aggrieved by the FRA's handling of a FOIA request,⁵⁶ they may address those concerns with the FRA.

C. MCLM's Character Qualifications

19. The Havens Entities repetitively argue that MCLM lacks the requisite character qualifications to hold, and thus assign, spectrum from Station WQGF318 to SCRRRA. They claim MCLM lacks "character and fitness, for repeated willful misrepresentations and rule violations including, but not limited to, its actual control and ownership, its actual officers and directors, its designated entity size . . . , undertaking unlawful transfers of control (including of the License), unlawful operation of AMTS licenses as PMRS . . . , and for maintaining stations that automatically terminated without specific Commission action for failure to meet the requirements of Section 80.475(a)."⁵⁷ In removing the SCRRRA Applications from the MCLM hearing proceeding,⁵⁸ the Commission found that despite possible questions

⁴⁷ See *supra* note 31.

⁴⁸ Havens Petition to Deny at 11.

⁴⁹ See *id.* at 16 n.10.

⁵⁰ See, e.g., *HDO*, 26 FCC Rcd at 6527-28, paras. 20-22.

⁵¹ *HDO*, 26 FCC Rcd 6520.

⁵² On April 22, 2015, Chief Administrative Law Judge Richard L. Sippel excluded Mr. Havens and several related entities from further participation in the hearing citing their pattern of disruptive conduct, and certified a question concerning Mr. Havens' character qualifications to the Commission. See *Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, FCC 15M-14, Memorandum Opinion and Order, 2015 WL 1890837 at *10, paras. 25-26 (ALJ 2015), *petition for reconsideration pending*.

⁵³ Havens Petition to Deny at 71.

⁵⁴ See *id.* at 42 n.23 (FOIA Control No. 2010-379); *id.* at 51 (FOIA Control Nos. 2007-177 and 2007-178); *id.* at 57 n.30; *id.* at 64 n.39 (FOIA Control No. 2007-178); *id.* at 68-69 FOIA Control Nos. 2009-089 and 2010-379).

⁵⁵ See 47 CFR §§ 0.461(i) and (j) (procedures for seeking review of Commission FOIA determinations).

⁵⁶ Havens Entities Further Statement at 4.

⁵⁷ Havens Petition to Deny at 1-2.

⁵⁸ *MCLM/SCRRRA Order*, 29 FCC Rcd at 10880, para. 25 ("we conclude that the SCRRRA Applications should be removed from the hearing in order to facilitate SCRRRA's implementation of PTC").

regarding MCLM's character qualifications, it would permit the Bureau's consideration of MCLM's application to assign the partitioned spectrum to SCRRA, citing the compelling "public interest in permitting the assignment of a spectrum license to SCRRA to implement a life-saving, positive train control system as required by Congress."⁵⁹ Because we are bound by the Commission's determinations in the *MCLM/SCRRA Order*,⁶⁰ we need not address the Havens Entities' myriad arguments regarding MCLM's character qualifications to hold and assign spectrum under Station WQGF318 to SCRRA; arguments that amount to reconsideration of that order.⁶¹

D. Incorporation of Other Pleadings

20. The Havens Entities' attempt to incorporate in their Petition to Deny "all the facts and arguments in their pleadings" in 24 other proceedings, which they denote alphanumerically as proceedings (a)-(h) and (1)-(16), and collectively refer to as "Related Proceedings."⁶² We are not required to scour the labyrinth of the Havens Entities' pleadings in 24 proceedings to discern what, if any, "facts and arguments" may be germane here and we decline the Havens Entities' entreaty to do so.⁶³

21. The Havens Entities broadly argue that the "Related Proceedings" show that MCLM lacks the requisite character to be a Commission licensee.⁶⁴ The Havens Entities also offer what they style as "New Facts 1 to New Facts 12," which appear to be culled from the "Related Proceedings," for the proposition that MCLM lacks fitness to be a Commission licensee and assign spectrum under Station WQGF318 to SCRRA.⁶⁵ As explained above, by removing the SCRRA Applications from the MCLM hearing proceeding, the Commission has determined that, despite arguments regarding MCLM's character, it would permit consideration of an application requesting a limited assignment of spectrum to SCRRA to deploy PTC. As such, arguments regarding MCLM's character are beyond the scope of our review of the SCRRA Applications.

⁵⁹ *Id.* at 10885, para. 33.

⁶⁰ *See Calvary Chapel of Honolulu, Inc. Maka'ainana Broadcasting Company, LTD.*, Memorandum Opinion and Order, 30 FCC Rcd 14910, 14911, para. 4 and n.10 (2015) ("the Bureau is bound by the decisions and guidelines set forth by the Commission and has no authority to alter or depart from Commission precedent").

⁶¹ The Havens Entities also attempt to interject state law claims regarding MCLM's fitness to be a Commission licensee. *See, e.g.*, Havens Petition to Deny at 16-21 (arguing that MCLM does not exist as a legal entity); *id.* at 52 ("MCLM does not exist as a legal entity under corporate law."). Such claims are beyond the scope of this proceeding and we need not address them here.

⁶² *See generally id.* at 39-42; *id.* at 49 n.26 ("Many of the new facts in this Petition [to Deny] . . . are being provided via reference and incorporation of Petitioners' pleadings in other proceedings that are already before the FCC.").

⁶³ *See, e.g., Petition of Core Communications, Inc. for Forbearance From Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14215, para. 13 n.48 (2007) ("the Commission is not obligated to search the record" to determine whether arguments incorporated by reference may be relevant); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 n.9 (D.C. Cir. 1969) (an "agency is not bound to process in depth what are only generalized pleas, a requirement that would condemn it to divert resources of time and personnel to hollow claims").

⁶⁴ Havens Petition to Deny at 43-49.

⁶⁵ *See generally id.* at 49-65; *id.* at 52 (New Facts 1, alleging "MCLM does not exist as a legal entity"); *id.* at 53 (New Facts 2, alleging "unauthorized transfer of control"); *id.* at 54-55 (New Facts 3, alleging "disregard for FCC rules and law"); *id.* at 56 (New Facts 4, alleging failure to disclose ownership and control); *id.* at 56 (New Facts 5, alleging same); *id.* at 57 (New Facts 6, alleging unlawful operation); *id.* at 57 (New Facts 7, alleging nonpayment of fees); *id.* at 57 (New Facts 8, alleging lack of candor); *id.* at 58 (New Facts 9, alleging illegal operation); *id.* at 58 (New Facts 10, alleging unlawful transfer of control, and lack of character and fitness); *id.* at 58-64 (New Facts 11, alleging noncompliance with FCC rules and lack of candor); *id.* at 64-65 (New Facts 12, alleging the making of false certifications).

E. Part 80 Rule Waiver Requests

22. SCRRRA requests waiver of seven Part 80 rules and any other rule provision that we determine to be necessary to enable Metrolink's PTC deployment in the AMTS spectrum band.⁶⁶ Before addressing each waiver request, we discuss the Havens Entities' general arguments opposing waiver relief.

23. The Havens Entities argue that SCRRRA seeks to use its AMTS licenses beyond the intent and purpose of the AMTS rules and that a Commission rulemaking on these issues, not waivers, is therefore appropriate.⁶⁷ We find that consideration of SCRRRA's requested rule waivers does not require a Commission rulemaking proceeding as the Havens Entities urge. It is well established that the Commission considers waiver requests on a case-by-case basis.⁶⁸ In fact, in 2015, the Bureau waived the same rules to enable Amtrak's acquisition of spectrum from certain of the Havens Entities to deploy PTC on AMTS spectrum.⁶⁹ In this case, we find that a general rulemaking is not required to address waiver requests involving SCRRRA's "unique and specific circumstances"⁷⁰ to deploy PTC along defined rail corridors in the Los Angeles Basin.

24. The Havens Entities generally oppose SCRRRA's waiver requests arguing that it has not made a "public interest case for PTC,"⁷¹ and that PTC deployment is tantamount to a "guinea-pig experiment."⁷² We disagree. Congress enacted the PTC mandate in the wake of a tragic Metrolink accident in which 25 persons lost their lives; an accident that the NTSB has determined PTC could have prevented.⁷³ In its order removing the SCRRRA Applications from the MCLM hearing, the Commission found that "PTC is a potentially transformative technology" that can "save lives, prevent injuries, and avoid extensive property damage."⁷⁴ In May 2016, the NTSB found that PTC could have prevented an Amtrak train derailment in which 8 persons lost their lives, and nearly 200 others were injured (many of them critically).⁷⁵ The public interest benefits of PTC are irrefutable and can be served by grant of the waiver requests to implement this life-saving technology.

⁶⁶ See SCRRRA Waiver Request. SCRRRA initially also requested waiver of Rule Sections 80.102(a), 80.123(d), 80.123(e), 80.123(g), 80.215(h)(5), 80.475(c), and 80.479(c), but has withdrawn its request as to those rules. See Minor Amendment and Second Minor Amendment.

⁶⁷ See Havens Petition to Deny at 33; Reply to Comments at 6-7.

⁶⁸ The Commission has held that waiver requests are best suited to a case-by-case analysis. See, e.g., *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, Report and Order, PS Docket Nos. 11-153 and 10-255, 28 FCC Rcd 7556, 7578, para. 62 (2013).

⁶⁹ *National Railroad Passenger Corporation (d/b/a Amtrak), Request for Waiver of Certain Part 80 Automated Maritime Telecommunications System Rules to Implement Positive Train Control*, Order, 30 FCC Rcd 2038 (WTB MD 2015) (*Amtrak Part 80 Waiver Order*).

⁷⁰ SCRRRA Opposition at 5-6.

⁷¹ Havens Petition to Deny at 34.

⁷² Havens Entities Further Statement at 2.

⁷³ See *supra* discussion at paragraph 3.

⁷⁴ *MCLM/SCRRRA Order*, 29 FCC Rcd at 10882, para. 29.

⁷⁵ The NTSB found that a PTC system could have prevented a May 12, 2015, accident in Philadelphia, where Amtrak train 188 derailed as it was going 106 miles per hour through a curve subject to a permanent 50 miles per hour speed restriction. NTSB, *Derailed of Amtrak Passenger Train 188, Philadelphia, Pennsylvania, May 12, 2015, Accident Report*, NTSB/RAR-16-02 at vi (2016), <http://www.nts.gov/investigations/AccidentReports/Pages/RAR1602.aspx>.

25. We also reject the Havens Entities claim that grant of the requested rule waivers would undermine Commission spectrum policy.⁷⁶ Rather, SCRRA's use of AMTS spectrum to deploy PTC will further the Commission's core mandate to "promot[e] safety of life and property through the use of wire and radio communications," embodied in Section 1 of the Communications Act.⁷⁷ As SCRRA notes, grant of the waivers will promote "intensive use of the AMTS spectrum,"⁷⁸ and is consistent with the Commission's goal of facilitating use of AMTS spectrum for safety purposes.⁷⁹

26. The Havens Entities urge us to deny the SCRRA Applications and waiver requests, alleging that SCRRA has not shown it needs AMTS spectrum to deploy PTC,⁸⁰ that the amount of spectrum it seeks to acquire from MCLM to deploy PTC is excessive,⁸¹ and that it should deploy a PTC technology favored by the Havens Entities.⁸² In the *MCLM/SCRRA Order*, the Commission noted that SCRRA has executed a temporary lease of 220-222 MHz band spectrum with PTC-220 to deploy PTC, but "this does not provide a long-term solution to its PTC spectrum needs."⁸³ The Commission also found that the freight rails' nationwide use of the 220-222 MHz Band to deploy PTC, coupled with the requirement that PTC systems be interoperable, "makes AMTS spectrum particularly suitable for PTC use."⁸⁴ The waivers SCRRA requests to deploy PTC on AMTS spectrum will, like those afforded Amtrak,⁸⁵ enable it to comply with the federal PTC mandate. Further, as noted below, the waiver relief we grant today is limited to use of the spectrum for PTC.⁸⁶

27. We now address SCRRA's request for waiver of the following Part 80 rules to facilitate Metrolink's PTC deployment:

- Section 80.92(a), which requires Part 80 licensees to monitor a frequency prior to transmitting,⁸⁷

⁷⁶ See, e.g., Havens Petition to Deny at 33.

⁷⁷ 47 U.S.C. § 151.

⁷⁸ SCRRA Opposition at 6. See also SCRRA Waiver Request at 14.

⁷⁹ See SCRRA Opposition at 6, citing *Maritel, Inc. and Mobex Network Services, LLC*, Report and Order, 22 FCC Rcd 8971, 8986-87, para. 26 (2007) (*Flexibility Order*), *aff'd*, 25 FCC Rcd 533 (2010), *aff'd*, 26 FCC Rcd 2491 (2011), *review dismissed*, 26 FCC Rcd 16579 (2011).

⁸⁰ Havens Entities Further Statement at 10 & n.11; see also Havens Petition to Deny at 34.

⁸¹ Havens Entities Reply at 8 (citing Metrolink November 9, 2009 Memorandum, Contract No. PO370-10, Item 17 at 2, which notes that SCRRA is "determining exactly how much spectrum is necessary for its PTC system," that one megahertz may be "more than will be necessary for SCRRA's short and mid-term PTC needs," and that it "may sell or lease any excess spectrum"). The Metrolink November 9, 2009 Memorandum is attached as Exhibit 1 to the Havens Entities Reply.

⁸² See, e.g., ENL/Havens/SSF Reply at 6 (asserting PTC using TETRA is successful outside the United States and that U.S. railroads "refuse to consider this proven solution"); Havens Entities Further Statement at 6-8 (asserting the railroads cling to a "teddy bear" concept of PTC as a "single technology platform").

⁸³ *MCLM/SCRRA Order*, 29 FCC Rcd at 10883, para. 30.

⁸⁴ *Id.* at 10884, para. 32.

⁸⁵ See *supra* discussion at paragraph 23.

⁸⁶ See *infra* discussion at paragraph 40.

⁸⁷ 47 CFR § 80.92(a).

- Section 80.105, which requires coast stations to receive calls from ship and aircraft stations;⁸⁸
- Section 80.123(a), which requires AMTS land stations to secure a letter authorizing the land station to communicate with the coast station;⁸⁹
- Section 80.123(b), which requires coast stations to afford priority to marine-originating communications;⁹⁰
- Section 80.123(c), which requires AMTS land stations to use the associated coast station's call sign, followed by a unique numeric or alphabetic unit identifier;⁹¹
- Section 80.123(f), which provides that AMTS land stations may only communicate with public coast stations;⁹² and
- Section 80.385(a)(2), which divides AMTS spectrum into coast (base) station frequencies (217-218 MHz) and ship (mobile) station frequencies (219-220 MHz).⁹³

28. *Waiver Standard.* Section 1.925(b)(3) of the Commission's Rules provides that we may grant a 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 grant of the requested waiver would be in the public interest; or (ii) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁹⁴ The Commission also may waive a rule, in whole or in part, on its own motion or on petition for good cause.⁹⁵

29. Further, when the Commission amended its rules to permit AMTS stations to provide private correspondence 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).⁹⁶

30. *Section 80.92(a).* Section 80.92(a) requires an AMTS station operator to determine that a frequency is not in use before transmitting.⁹⁷ SCRRA states that “because PTC systems must be operated

⁸⁸ 47 CFR § 80.105.

⁸⁹ 47 CFR § 80.123(a).

⁹⁰ 47 CFR § 80.123(b).

⁹¹ 47 CFR § 80.123(c).

⁹² 47 CFR § 80.123(f).

⁹³ 47 CFR § 80.385(a)(2).

⁹⁴ 47 CFR § 1.925(b)(3); *see also WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

⁹⁵ 47 CFR § 1.3.

⁹⁶ *See Flexibility Order*, 22 FCC Rcd at 8986-87, para. 26.

⁹⁷ 47 CFR § 80.92(a).

on an exclusive use basis, there is no reason to listen first for nonexistent other transmitters.”⁹⁸ SCRRA explains that the rule is inapplicable to SCRRA’s Time Division Multiple Access (TDMA) PTC technology, which assigns timeslots to users on a repeating basis so there is no time (spectrum capacity) lost listening before transmitting.⁹⁹ In the *Amtrak Part 80 Waiver Order*, the Bureau found that waiving the requirement to monitor before transmitting would “promote the efficient use of AMTS spectrum and serve the public interest by promoting rail safety.”¹⁰⁰ We find that the underlying purpose of Section 80.92(a)’s requirement to listen before transmitting—to avoid interference—would not be served where, as here, there will be no co-channel incumbent licensees, and that grant of the requested waiver would be in the public interest by promoting rail safety and the efficient use of AMTS spectrum.¹⁰¹

31. *Section 80.105 and Section 80.123(b)*. SCRRA requests waiver of the requirements that AMTS licensees receive calls from ship stations (Section 80.105),¹⁰² and that they afford priority to marine communications (Section 80.123(b)).¹⁰³ SCRRA explains that PTC “must be operated on an exclusive-use private land mobile basis, and could not possibly provide service to maritime traffic.”¹⁰⁴ SCRRA states that transmissions from other users would create interference with its PTC system and could cause unplanned stops where “the PTC system interprets the lack of its own signal reception as a lack of movement authority.”¹⁰⁵ The FRA supports the rule waivers requested by SCRRA, stating that they are “required to allow necessary intercommunication between the various PTC system elements,” and that not granting rule waivers “would be detrimental to PTC operation by interrupting critical information flow.”¹⁰⁶ The Havens Entities oppose the requested rule waivers, claiming SCRRA has failed to show good reason why they should be waived in one of the largest port areas of the United States.¹⁰⁷

32. In the *Amtrak Part 80 Waiver Order*, the Bureau waived the requirement to afford priority to marine communications to enable PTC, finding that “use of the AMTS frequencies will not jeopardize the maritime community’s ability to meet its operational, safety, and security communications needs.”¹⁰⁸ SCRRA states that waiver of the marine-priority requirement will not harm maritime users because there are numerous other licensees in the relevant area available to meet marine communications needs.¹⁰⁹ SCRRA also notes that maritime users are increasingly using cellular and satellite telephone service to meet their communications needs and that the coastal area of the proposed partitioned license area is well served by cellular and satellite service providers.¹¹⁰

33. In the *Amtrak Part 80 Waiver Order*, the Bureau also waived the Section 80.105 requirement that coast stations receive calls from ship stations, finding that “permitting Amtrak’s stations

⁹⁸ SCRRA Waiver Request at 7 n.18.

⁹⁹ *Id.*

¹⁰⁰ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2041, para. 11.

¹⁰¹ 47 CFR § 1.925(b)(3)(i).

¹⁰² 47 CFR § 80.105.

¹⁰³ 47 CFR § 80.123(b).

¹⁰⁴ SCRRA Waiver Request at 6.

¹⁰⁵ *Id.*

¹⁰⁶ FRA Letter at 2.

¹⁰⁷ Havens Petition to Deny at 34.

¹⁰⁸ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2041, para. 11.

¹⁰⁹ SCRRA Waiver Request 9-12. SCRRA states that it provided a copy of the SCRRA Applications to the United States Coast Guard (USCG) and that the USCG had no objection. *Id.* at 10 n.23.

¹¹⁰ *Id.* at 12.

to communicate with stations other than public coast and ship stations will promote the efficient use of AMTS spectrum and serve the public interest by improving safety in railroad operations.”¹¹¹ We find that waiver of Sections 80.105 and 80.123(b) to enable SCRRRA’s PTC deployment will not jeopardize the maritime community’s ability to meet its operational, safety, and security communications needs. We also find that in light of the unique circumstances of SCRRRA’s PTC deployment, application of Sections 80.105 and 80.123(b) to its PTC operations would be contrary to the public interest in rail safety and accordingly waive these rules.¹¹²

34. *Section 80.123(a)*. SCRRRA seeks a waiver of the requirement that AMTS land stations secure a letter authorizing the land station to communicate with the coast station (Section 80.123(a)),¹¹³ which enables authorities to verify that a unit on land is authorized to operate on AMTS spectrum.¹¹⁴ SCRRRA’s system is configured to transmit only data, and its railroad operations take place in limited locations where the responsible party is easily identifiable. We previously granted such a request with respect to an electric utility’s fixed data system,¹¹⁵ and for Amtrak’s PTC deployment on AMTS spectrum.¹¹⁶ We find that in light of the unique circumstances SCRRRA faces in complying with the federal PTC mandate, application of Section 80.123(a) to its operations is unnecessary and would be unduly burdensome and therefore waive this rule.¹¹⁷

35. *Section 80.123(c)*. SCRRRA seeks waiver of Section 80.123(c), which provides that a coast station may communicate with a land station only if the land station uses the coast station’s call sign.¹¹⁸ SCRRRA states that compliance with this rule would be unduly burdensome and is unnecessary for its operation of an exclusive use, land-based private PTC system.¹¹⁹ We note that in 2000, the Commission forbore from requiring AMTS licensees to comply with the general AMTS station identification requirement.¹²⁰ We clarify here that the Commission’s forbearance from the general AMTS station identification requirement (47 CFR § 80.102) relieves AMTS licensees from compliance with the station identification requirement of Section 80.123(c) because AMTS land stations are no longer required to identify themselves. We therefore conclude that waiver of Section 80.123(c) is unnecessary.

36. *Section 80.123(f)*. SCRRRA seeks waiver of the requirement that AMTS land stations only communicate with public coast stations (Section 80.123(f)),¹²¹ explaining that such an operational standard is unnecessary for a private, internal-use only system.¹²² We agree and note that the Bureau

¹¹¹ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2042, para. 13.

¹¹² 47 CFR § 1.925(b)(3)(ii). *See also County of Silverbow, Montana*, Order, 24 FCC Rcd 12547, 12565, para. 41 (PSHSB PD 2009) (*Silverbow Order*) (waiving Sections 80.105 and 80.106 to permit use of VHF Public Coast station frequencies in a Public Safety PLMR system).

¹¹³ 47 CFR § 80.123(a).

¹¹⁴ SCRRRA Waiver Request at 1.

¹¹⁵ *See PHI Service Co.*, Order, 29 FCC Rcd 8176, 8179, para. 9 (WTB MD 2014).

¹¹⁶ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2042, para. 12.

¹¹⁷ 47 CFR § 1.925(b)(3)(ii).

¹¹⁸ 47 CFR § 80.123(c) (“Land station identification shall consist of the associated public coast station’s call sign, followed by a unique numeric or alphabetic unit identifier.”).

¹¹⁹ SCRRRA Waiver Request at 6 n.16.

¹²⁰ 47 CFR § 80.102; *Regionet Wireless License, LLC*, Order, 15 FCC Rcd 16119, 16119, para. 1 (2000) (“AMTS stations are no longer required to identify themselves, by giving their call sign, in English, at the beginning and end of each communication with any other station and at fifteen minute intervals when transmission is sustained for more than fifteen minutes.”).

¹²¹ 47 CFR § 80.123(f).

¹²² SCRRRA Waiver Request at 6 n.17.

granted Amtrak a waiver of this requirement to enable its PTC deployment on AMTS spectrum.¹²³ We find that in light of the unique circumstances SCRRA faces in complying with the federal PTC mandate, application of Section 80.123(f) to its PTC operations would be contrary to the public interest in rail safety and accordingly waive this rule.¹²⁴

37. *Section 80.385(a)(2)*. SCRRA requests waiver of Section 80.385(a)(2),¹²⁵ which divides the AMTS spectrum band into coast (base) station frequencies (217-218 MHz) and ship (mobile) station frequencies (219-220 MHz). SCRRA explains that since its PTC system will use TDMA transmit/receive time slot separation, it must allow all three types of PTC stations (base, mobile, and wayside) to transmit on both the base and mobile station frequencies.¹²⁶ We note that when the Bureau granted Amtrak a waiver of this requirement to deploy PTC on AMTS spectrum, it emphasized that Amtrak would operate under the antenna height and power levels permitted for AMTS stations and the limited geographic area of Amtrak's rail operations.¹²⁷ Because SCRRA's PTC operations will comply with the AMTS antenna height and power level rules and because its rail lines likewise span a limited geographic area, we conclude that a waiver of Section 80.385(a)(2) is warranted. We also find that in light of the unique circumstances SCRRA faces in complying with the federal PTC mandate, strict application of Section 80.385(a)(2) to its PTC operations would be contrary to the public interest and accordingly waive this rule.¹²⁸

38. *Section 80.106*. In its Waiver Request, SCRRA also requests "waiver of any additional rule provisions which the Commission may determine to be necessary for the proposed [PTC] operations."¹²⁹ SCRRA furthermore states that PTC "must be operated on an exclusive-use private land mobile basis, and could not possibly provide service to maritime traffic."¹³⁰ Based on our review of the record before us, we find that waiver of Section 80.106¹³¹—which requires an AMTS public coast station to receive communications from mobile stations (*i.e.*, ship and aircraft stations at sea) and to transmit communications delivered to it which are directed to mobile stations—is warranted.

39. In the *Amtrak Part 80 Waiver Order*, the Bureau concurrently waived Section 80.106 to enable Amtrak's PTC deployment when it waived the requirement, under Section 80.105, that AMTS coast stations acknowledge and receive calls from mobile stations.¹³² Consistent with the *Amtrak Part 80 Waiver Order*, we find that waiving Section 80.106 here will promote the efficient use of AMTS spectrum and serve the public interest by improving safety in railroad operations, without jeopardizing the maritime community's ability to meet its operational, safety, and security communications needs.¹³³ We also find that in light of the unique circumstances of SCRRA's PTC deployment, application of Section

¹²³ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2042, para. 13.

¹²⁴ 47 CFR § 1.925(b)(3)(ii).

¹²⁵ 47 CFR § 80.385(a)(2).

¹²⁶ SCRRA Waiver Request at 9.

¹²⁷ *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2042-43, para. 14.

¹²⁸ 47 CFR § 1.925(b)(3)(ii).

¹²⁹ SCRRA Waiver Request at 1-2.

¹³⁰ *Id.* at 6.

¹³¹ 47 CFR § 80.106.

¹³² *Amtrak Part 80 Waiver Order*, 30 FCC Rcd at 2042, para. 13.

¹³³ *Id.*

80.106 to its PTC operations would be contrary to the public interest in rail safety and therefore waive this rule.¹³⁴

40. In addition to the reasons discussed above for granting SCRRA a waiver of certain AMTS rules to facilitate its compliance with the federal PTC mandate, we also find good cause under Section 1.3 of the Commission's rules to waive these rules,¹³⁵ because doing so will serve the public interest in commuter rail safety in the greater Los Angeles area.¹³⁶ We emphasize that the waiver relief we grant today will only apply to use of the AMTS spectrum to deploy PTC in defined rail corridors, thereby limiting the area of potential interference. If SCRRA assigns, partitions, disaggregates, or leases any spectrum it acquires from MCLM to a third party, the waivers would only apply if that spectrum is used for PTC.

F. Reclassification of AMTS Spectrum

41. For the reasons that follow, we grant MCLM's application to modify the regulatory status of the AMTS spectrum it proposes to assign to SCRRA and thereby enable SCRRA's private PTC use of that spectrum.¹³⁷

42. AMTS stations are presumptively regulated as a commercial mobile radio service (CMRS).¹³⁸ Section 20.9(b) of the Commission's rules provides that an AMTS applicant or licensee that wishes to provide service on a private mobile radio service (PMRS)¹³⁹ basis, such as SCRRA, can overcome this presumption by certifying that it will offer service on a PMRS basis.¹⁴⁰ The certification must describe the proposed service sufficiently to demonstrate that it is not within the definition of CMRS under Section 20.3 of the Commission's rules.¹⁴¹ Applications requesting to use AMTS spectrum to offer service on a PMRS basis must be placed on public notice by the Commission;¹⁴² a petition to deny such an application must contain specific allegations of fact to show that the applicant's request does not rebut the CMRS presumption.¹⁴³

43. MCLM's Modification Application was placed on public notice,¹⁴⁴ and both MCLM and SCRRA filed Section 20.9(b) Certifications. In its certification, MCLM states that to accommodate SCRRA's PTC deployment, it will provide no further CMRS in the license area to be assigned to SCRRA.¹⁴⁵ MCLM also states that it has notified its customers, who are on month-to-month contracts, of

¹³⁴ 47 CFR § 1.925(b)(3)(ii). See also *Silverbow Order*, 24 FCC Rcd at 12565, para. 41 (waiving Sections 80.105 and 80.106 to permit use of VHF Public Coast station frequencies in a Public Safety PLMR system).

¹³⁵ This includes all rules discussed above with the exception of 47 CFR § 80.123(c), which does not require a waiver. See *supra* discussion at paragraph 35.

¹³⁶ 47 CFR § 1.3.

¹³⁷ SCRRA Public Interest Statement at 1.

¹³⁸ 47 CFR § 20.9(a)(5). CMRS is defined as a mobile service that is (1) provided for profit, (2) interconnected to the public switched network, and (3) either publically available or effectively available to a substantial portion of the public. 47 CFR § 20.3.

¹³⁹ PMRS is defined as a mobile service that is neither a CMRS nor the functional equivalent of a service that meets the definition of CMRS. 47 CFR § 20.3.

¹⁴⁰ 47 CFR § 20.9(b)(1).

¹⁴¹ *Id.* See also 47 CFR § 20.3 (CMRS definition).

¹⁴² 47 CFR § 20.9(b)(1).

¹⁴³ 47 CFR § 20.9(b)(2).

¹⁴⁴ See *supra* note 18, *MCLM/SCRRA Public Notice*.

¹⁴⁵ Certification Pursuant to Section 20.9(b), FCC File No. 0004153701 at 1 (filed Mar. 4, 2010).

its intent to terminate service to enable SCRRA's PTC deployment.¹⁴⁶ MCLM states that "[u]pon grant of the partition to SCRRA, [it] will take down all of its radio facilities in the area,"¹⁴⁷ and upon termination of service, that it will not operate an AMTS service for profit.¹⁴⁸ In their Petition to Deny, the Havens Entities argue that MCLM's Section 20.9(b) Certification should be "dismissed or denied," claiming that MCLM lacks the required character to be a Commission licensee.¹⁴⁹ As explained above, because the Commission removed the SCRRA Applications from the ambit of the MCLM hearing, such character allegations are beyond the scope of this proceeding.¹⁵⁰ The Havens Entities moreover do not address whether MCLM has rebutted the CMRS presumption. We find that because MCLM will terminate any remaining CMRS before completing the spectrum assignment to SCRRA, MCLM has overcome the presumption for the limited spectrum at issue.¹⁵¹

44. In SCRRA's Section 20.9(b) Certification, it states that its "PTC service cannot and will not meet the definition of CMRS because 1) PTC transmissions will not be available to the public or to classes of the public, 2) PTC transmissions will not be interconnected, and 3) the PTC radio transmission service will not be provided for profit."¹⁵² SCRRA explains that to provide PTC, it will be unable to provide CMRS to maritime customers or be interconnected with the public switched network, that such transmissions to outside users would serve no purpose, and that any transmissions from outside users would create interference, triggering unplanned, repeated interruptions to its commuter rail service.¹⁵³

45. The Havens Entities fail to address whether SCRRA's proposed PTC service is a CMRS.¹⁵⁴ Instead, they allege that SCRRA's Section 20.9(b) Certification is infirm, arguing that an internal SCRRA memorandum indicates that SCRRA will not require all of the spectrum it seeks to acquire from MCLM to implement PTC.¹⁵⁵ The Havens Entities misconstrue the import of the SCRRA memorandum, which demonstrates that SCRRA was evaluating the quantity of spectrum required to implement PTC and, that if it acquired surplus spectrum, it might sell or lease that spectrum to a third party.¹⁵⁶ We also note that, in its full context, the memorandum provides no support for the Havens Entities' allegations that SCRRA demonstrated a lack of candor before the Commission.¹⁵⁷

46. The record before us demonstrates that SCRRA intends to use the spectrum it seeks to acquire from MCLM for PTC deployment on non-commercial, private mobile radio basis.¹⁵⁸ We find that

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 1-2.

¹⁴⁹ Havens Petition to Deny at 38-39. These arguments include the assertion that MCLM's petitions to deny unrelated Havens Entities' Section 20.9(b) applications in a separate, unrelated proceeding demonstrates a lack of candor on MCLM's part. *Id.*

¹⁵⁰ *See supra* paragraph 19.

¹⁵¹ 47 CFR § 20.9(b)(2).

¹⁵² Certification Pursuant to Section 20.9(b), FCC File No. 0004144435 at 2 (filed Mar. 3, 2010) (SCRRA Section 20.9(b) Certification), *citing to* 47 CFR § 20.3.

¹⁵³ SCRRA Section 20.9(b) Certification at 1-2. SCRRA states that trains will automatically stop when the PTC system interprets the lack of its own signal reception as a lack of movement authority. *Id.* at 2.

¹⁵⁴ *See* 47 CFR § 20.9(b)(2).

¹⁵⁵ ITL/THL/VSL Reply at 23.

¹⁵⁶ *See supra* note 81.

¹⁵⁷ *See* ITL/THL/VSL Reply at 23.

¹⁵⁸ *See Applications of Verde Systems, LLC*, Order, 25 FCC Rcd 9166, 9170, para. 9 (WTB MD 2010) (finding that statement describing intent to operate on a private, internal basis without interconnection to the public switched

(continued....)

SCRRRA, given its planned use of the AMTS spectrum, has overcome the CMRS regulatory classification presumption,¹⁵⁹ and hereby grant the Modification Application.

IV. CONCLUSION AND ORDERING CLAUSES

47. For the reasons above, we conclude that grant of the SCRRRA Applications and related waiver requests will further the vital public interest in rail safety and is consistent with the federal PTC mandate, the Commission's determinations in the *MCLM/SCRRRA Order*, and relevant Commission rules.

48. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.3 and 1.925(b)(3) of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925(b)(3), that applications under ULS File Nos. 0004153701 and 0004144435 ARE GRANTED to the extent discussed above.

49. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the Petition to Deny, and in the Alternative Section 1.41 Request, filed by Warren Havens, Environmental LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, and Verde Systems LLC on April 28, 2010, ULS File Nos. 0004153701 and 0004144435, IS DENIED. All other pleadings filed by Warren Havens and any of these five associated entities of which he is President under WT Docket 10-83, ULS File No. 0004153701, or ULS File No. 0004144435 are DISMISSED AS MOOT.

50. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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network sufficiently demonstrates that operations would not be within the definition of a CMRS.) The Commission has stated that when weighing the sufficiency of Section 20.9(b) certifications, it would "rely primarily upon applicants' representations regarding their regulatory status." *Id.* at 9169, para. 6 n.24, citing *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19879, para. 54 (1998).

¹⁵⁹ 47 CFR § 20.9(b)(1).