

Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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MAR 14 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 01-90
Regarding Dedicated Short-Range Communication)	
Services in the 5.850-5.925 GHz Band)	
)	
Amendment of Parts 2 and 90 of the Commission's)	
Rules to Allocate the 5.850-5.925 GHz Band to the)	ET Docket No. 98-95
Mobile Service for Dedicated Short Range)	RM-9096
Communications of Intelligent Transportation)	
Services)	

To: The Commission

Comments of the Association of American Railroads

The Association of American Railroads ("AAR"), by its undersigned counsel, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-referenced matter, FCC 02-302, released November 15, 2002, and published in the Federal Register on January 15, 2003.¹ AAR's comments are directed to the question raised by the Commission at paragraphs 17-20 of the NPRM concerning eligibility to use the 5.9 GHz Band

AAR is a voluntary non-profit organization composed of Class I member railroad companies operating in the U.S, Canada and Mexico. One of AAR's roles is to represent its members in connection with federal regulatory matters of concern to the

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railroad industry, including matters relating to communications and access to radio frequency spectrum. Also, AAR is the organization certified by the Commission as the designated frequency coordinator for licensing the Private Land Mobile Radio (PLMR) bands for railroad use.² In this regard, AAR serves as the railroad industry's frequency coordinator not only for its own members, but also for other entities that meet the definition of "railroad licensee" in Section 90.7 of the FCC's rules (such as metropolitan transit authorities and regional and short-line railroads).

The railroad industry's heavy reliance on spectrum for wireless communications networks, both mobile and fixed, is well known to the Commission and has been extensively described in recent filings. On March 6, 2002, for example, AAR filed comments with the Commission describing railroad spectrum use in response to the FCC's Public Notice released February 14, 2002 (DA 02-631) concerning the report of the National Telecommunications and Information Administration ("NTIA) entitled "Current and Future Spectrum Use by the Energy, Water and Railroad Industries." And more recently, on July 8, 2002, AAR submitted comments to the Chairman's Spectrum Policy Task Force (ET Docket No. 02-135), including a comprehensive, band-by-band

1 68 Fed. Reg. 1999. January 15, 2003.

2 Frequency Coordination in the Private Land Mobile Radio Services, Report & Order, 103 FCC 2d 1093, ¶ 94 (1986); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, Second Report & Order, 12 FCC Rcd 14307, 14324, 14330 (1997); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, Second Memorandum Opinion & Order, 14 FCC Rcd 8642 (1999); Waiver of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for Advanced Train Control System, Order, 3 FCC Rcd 427 (PRB 1988); Modification of AAR's Licenses for Use in Positive Train Control Systems, Order, 16 FCC Rcd 3078 (WTB 2001).

description of how the railroad industry uses spectrum, especially for safety-related applications.

In the instant proceeding regarding the use of the 5.850-5.925 GHz band (the "5.9 GHz Band") for Dedicated Short-Range Communications Services in connection with "Intelligent Transportation Services," the Commission has tentatively concluded that the 5.9 GHz Band "should be used primarily for 'public safety' purposes,"³ and has requested comment on the criteria to be employed for determining what is a "public safety" entity for the purpose of eligibility to use the 5.9 GHz spectrum.⁴

AAR supports the Commission's tentative conclusion that the band should be used primarily for "public safety" purposes and urges the Commission to use the criteria set forth in Section 309(j)(2) of the Communications Act, enacted as part of the Balanced Budget Act of 1997. That section exempted certain groups from the Commission's auction authority as "public safety radio services," which are defined as services, including private internal radio services, used by governmental as well as non-governmental entities, that are used to protect the safety of life, health, or property and that are not made commercially available to the public. According to the Conference Report accompanying the Balanced Budget Act amendments, the exemption of Section 309(j)(2) extends to private internal radio systems used by railroads, metropolitan transit systems, utilities, pipelines, private ambulance companies, volunteer fire departments, and non-profit organizations that offer emergency road services. The criteria for defining "public safety" entities under Section 309(j)(2) are broader than

³ Notice of Proposed Rule Making in WT Docket No. 01-90, FCC 02-302, released November 15, 2002. at para. 18.

those used for defining public safety eligibility for use of the 700 MHz band set forth in Section 337(f) of the Act (*i.e.*, only State or local government entities whose primary mission is to protect public safety, such as police and fire departments).

AAR believes it is appropriate to afford access to the 5.9 GHz Band to the class of "public safety radio service" entities identified in the auction exemption of Section 309(j)(2) of the Act because those entities do provide essential services and critical infrastructure to the public, and because the facilities and operations of those entities may be directly involved in emergency situations. In this regard, AAR agrees with the Commission's suggestion at paragraph 20 of the NPRM that the underlying purpose of the Intelligent Transportation System program, namely, "to improve the safety and efficiency of the nation's surface transportation system through the use of advanced electronics and communications" is consistent with using the statutory definition of "public safety radio services" for determining eligibility for use of the 5.9 GHz Band. In addition, AAR believes that using the definition of "public safety radio services" contained in Section 309(j)(2) of the Act will have the further benefit of broadening the partnership opportunities between traditional public safety entities (*e.g.*, police and fire departments) and critical infrastructure entities such as railroads, utility companies and others, in circumstances where a coordinated response to emergency conditions would be preferred.

In conclusion, AAR respectfully requests the Commission to determine eligibility

4 *Id.* at paras. 19-20

for use of the 5.9 GHz Band based on the “public safety radio services” criteria set forth in Section 309(j)(2) of the Communications Act.

Respectfully submitted,

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