

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

In the Matter of
Amendment of Part 90 of the Commission's Rules
to Enable Railroad Police Officers to Access Public
Safety Interoperability and Mutual Aid Channels
PS Docket No. 15-199
RM-11721

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Rosenworcel issuing a separate statement.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM) we propose to amend our rules to permit railroad police officers to use public safety interoperability and mutual aid channels to communicate with

public safety entities already authorized to use those band segments.¹ We believe that allowing railroad police officers to use these channels will promote interoperability and facilitate improved emergency response in railroad-related emergencies and eliminate unnecessary regulatory barriers to use of these channels.

2. Specifically, we propose to permit railroad police officers that are empowered to carry out law enforcement functions to use public safety interoperability and mutual aid channels in the VHF (150-174 MHz and 220-222 MHz),² UHF (450-470 MHz), 700 MHz narrowband (764–776/794–806 MHz) and 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) bands (806-809/851-854 MHz). In addition, we propose to publish a list in our rules of the designated nationwide VHF, UHF, 700 MHz and 800 MHz public safety interoperability channels. We believe that these measures will enhance the ability of railroad police to carry out their law enforcement responsibilities by facilitating interoperability with Federal, State, Local and Tribal public safety entities.

II. BACKGROUND

3. The Commission's rules currently provide that governmental entities and certain non-governmental entities and individuals with public safety responsibilities are eligible for licensing on public safety spectrum in the VHF, UHF and 800 MHz bands.³ Slightly more restrictive eligibility criteria apply to the 700 MHz narrowband channels.⁴ None of these rules includes railroad police as eligible users.

4. In its Petition, NPSTC proposes that the Commission license railroad police to operate on public safety interoperability frequencies for which they currently are not eligible.⁵ NPSTC submits that railroad police “have an increasing need for effective and expeditious communications interoperability with members of local and state law enforcement, fire and emergency medical organizations that do meet the Commission's eligibility requirements.”⁶ On May 30, 2014, the Public Safety and Homeland Security Bureau issued a *Public Notice* seeking comment on the NPSTC Petition.⁷

5. Commenters uniformly support the NPSTC proposal, citing the safety of life and property role that railroad police officers play in emergencies.⁸ In particular, the United States

¹ The terms “interoperability channels” and “mutual aid channels” are functionally synonymous however the mutual aid channel nomenclature is used only with reference to five channels in the 800 MHz NPSPAC band and ten channels in the 220-222 MHz band (channels 161-170).

² In the 220-222 MHz band, we propose to amend 47 C.F.R. § 90.720 to permit railroad police officers to access the ten channels available for public safety and mutual aid (*i.e.* channels 161-170).

³ 47 C.F.R. § 90.20(a).

⁴ 47 C.F.R. § 90.523.

⁵ The eligibility criteria for the 700 MHz narrowband channels in 47 C.F.R. § 90.523 are somewhat more restrictive because they are governed by the definition of “public safety services” contained in Section 337(f)(1) of the Communications Act of 1934, as amended, which applies to the 700 MHz band. 47 U.S.C. § 337(f). Section 337(f)(1) excludes nongovernment organizations from the statutory definition unless they are “authorized by a governmental entity whose primary mission is the provision” of public safety services. 47 U.S.C. § 332(f)(1)(B)(ii).

⁶ Petition for Rulemaking of the National Public Safety Telecommunications Council, RM-11721, at 4 (filed May 27, 2014) (Petition).

⁷ Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking of the National Public Safety Telecommunications Council Requesting Modification of Part 90 of the Commission's Rules to Enable Railroad Police to Access Frequencies Reserved for Public Safety Interoperability, RM-11721, *Public Notice*, 29 FCC Rcd 5852 (PSHSB 2014) (*Railroad Police PN*).

⁸ See Comments of Association of American Railroads (AAR); Comments of Adrian & Blissfield Rail Road Company at 2 (ADBF); Comments of American Short Line and Regional Railroad Association (ASLRRRA) at 2;

Department of Transportation (DOT) and the Federal Railroad Administration (FRA), an operating administration within DOT, filed comments in support of the petition. DOT and FRA emphasize the key role of railroad police in promoting the safety and security of the rail network, and note DOT's statutory authority to prescribe regulations certifying and commissioning railroad police so that in specified circumstances they "may enforce the laws of any jurisdiction in which the rail carrier owns property."⁹ In light of these considerations, DOT and FRA urge that "[r]ailroad operators and employees must be able to communicate quickly and efficiently with first responders to address problems and respond to emergencies."¹⁰

6. The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) also filed comments supporting the petition, expressing similar interests in ensuring that railroad police have interoperable communications with public safety officials.¹¹ These commenters point out that Congress has made grant funding available to enable railroads to obtain communications equipment that is interoperable with Federal, State, local and tribal governments.¹² Another commenter contends that railroads have been hindered from participating in emergency exercise training due to a lack of interoperable communications with law enforcement and other emergency responders.¹³

III. DISCUSSION

7. In accidents involving railroads or security incidents involving the U.S. rail network, public safety personnel and railroad police officers frequently need to communicate with one another. Train derailments, for example, which can result in significant passenger injuries and loss of life, can require large, multi-jurisdictional responses, including railroad police, state and local police officers, firefighters, and officials from the Federal Bureau of Investigation and the Department of Homeland Security. To support emergency response to such multi-jurisdictional events, and to meet localized law enforcement requirements on railroads, we propose to amend our rules to facilitate railroad police access to the interoperability channels. Interoperability between public safety agencies and railroad police officers is also essential in training exercises for coordinated response to emergencies. Congress recognized the importance of interoperability for railroad police when it enacted the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Recommendations Act), which provides that railroad grant funding may be used, *inter alia*, to acquire "communications equipment, including equipment that is interoperable with Federal, State, and local agencies and tribal governments[.]"¹⁴

8. In light of these considerations, we propose to designate railroad police as eligible users of public safety interoperability and mutual aid channels in order to communicate with public safety licensees on those channels. We seek comment on how this capability best should be implemented consistent with the Commission's policies and statutory authority. In that connection, we seek comment on simplifying our rules to facilitate interoperability between public safety and railroad police nationwide.

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Comments of Benjamin Black at 1; Comments of Motorola Solutions, Inc. at 2-3 (MSI); Comments of the U.S. Department of Transportation and Federal Railroad Administration at 1 (DOT).

⁹ 47 U.S.C. § 28101(a).

¹⁰ DOT Comments at 1.

¹¹ AAR Comments at 4; ASLRRA Comments at 3.

¹² AAR Comments at 2; ASLRRA Comments at 2.

¹³ ADBF Comments at 2.

¹⁴ See Pub. L. No. 110-53, 121 Stat. 266, 434 § 1513 (codified at 6 U.S.C. § 1163(b)(8)).

A. Definition of Railroad Police Officers.

9. One of the key questions that must be addressed is the appropriate definition of railroad police officers. In defining the class of users eligible to access the interoperability channels, we propose to use the definition set forth in the FRA rules, which define “railroad police officer” as follows:

(a) Railroad police officer means a peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(b) Commissioned means that a state official has certified or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(c) Property means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.¹⁵

The FRA rule appears to be sufficiently broad to include part-time and Amtrak police within the definition of railroad police officer.¹⁶ Moreover, given that FRA uses this definition for its regulatory purposes, we believe using it in our rules would promote regulatory clarity and consistency. We seek comment on this proposal. In that connection, we propose to make explicit in our rules that the class of eligible users would include part-time and Amtrak railroad police officers meeting the FRA definition of railroad police officer. To streamline the licensing process, we also seek comment on allowing railroads or railroad police departments to obtain licenses for use by their individual railroad police officer-employees.

10. As an alternative, NPSTC proposes that the Commission define railroad police as eligible users in accordance with the definition contained in a resolution by the International Association of Chiefs of Police (IACP).¹⁷ The IACP Resolution urges that public safety interoperability channels be available for use by railroad police who:

“...are certified and/or commissioned as a police officer under the laws of any state, in accordance with the regulations issued by the Secretary of the U.S. Department of Transportation and employed full time as a railroad police officer for a Class I, II, or III railroad, as defined by the U.S. Department of Transportation’s Surface Transportation Board and recognized by the Federal Railroad Administration.”¹⁸

11. Some commenters, however, suggest that the NPSTC definition is too restrictive, to the extent it does not include part-time railroad police officers or Amtrak police.¹⁹ For example, ADBF and ASLRRRA suggest extending eligibility to “[a]ny Class I, II, or III rail carrier, as those terms are defined at 49 C.F.R. § 1201, and Amtrak, for use by their railroad police officers for public safety interoperability

¹⁵ See 49 C.F.R. § 207.2(a)-(c).

¹⁶ This provision implements section 1704 of the Crime Control Act of 1990 (formerly codified at 45 U.S.C. § 446 and now codified at 49 U.S.C. § 28101 (railroad police officers)) and applies to all railroads, “as such term is defined in section 202(e) of the Federal Railroad Safety Act (FRSA) of 1970, as amended, Public Law 91-458.” 49 C.F.R. § 207.1. See 59 Fed. Reg. 6585 (Feb. 11, 1994). While it is unclear what definition this regulation intended to incorporate, the term “railroad” would appear to include Amtrak, which as noted below is specifically authorized to employ rail police.

¹⁷ Petition at 5 *citing* Resolution CTC.027.a13, IACP Support for Improved Railroad Police Communications, adopted at the 120th Annual Conference of the IACP, Philadelphia, PA, October 23, 2013 (IACP Resolution).

¹⁸ Petition at 5.

¹⁹ ADBF Comments at 4; ASLRRRA Comments at 4.

communications essential to the law enforcement activities of the rail carrier.”²⁰ AAR also supports including Amtrak police in the definition, noting that Amtrak is authorized by statute to employ rail police “to provide security for rail passengers and property of Amtrak,” and that such rail police “who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be employed without regard to the law of another State containing those requirements.”²¹

12. We seek comment on this issue, and on any alternative definition of railroad police officer for this purpose. We note that Amtrak provides long-haul passenger (*e.g.* inter-city) service and that commuter and passenger rail systems serve the high-frequency transit needs of local and regional communities (*e.g.* urban and suburban areas). Thus, we ask commenters whether additional changes to the proposed definition of railroad police officer would be necessary to facilitate interoperability between public safety and railroad police officers serving local and regional commuter and passenger rail transit systems.

13. If we authorize railroad police to use interoperability channels, we believe it would be overly cumbersome to license each officer individually. Accordingly, we seek comment on licensing officers’ employers, *e.g.*, the railroad police department or the railroad itself, with a condition limiting use of the interoperability frequencies to railroad police officers that meet the definition we adopt.

B. 700 MHz Narrowband Interoperability Channels – Need for Governmental Agency Authorization

14. In the VHF, UHF and 800 MHz bands, we have the discretion to allow railroad police access to interoperability and mutual aid channels without requiring that they obtain further authorization from a governmental entity. In the 700 MHz narrowband spectrum, however, Section 90.523 of the Commission’s rules requires non-governmental entities to be authorized by a “state or local governmental entity whose mission is the oversight of or provision of services, the sole or principal purpose of which is to protect the safety of life, health or property.”²² Rather than amend this rule, which stems directly from Section 337 of the Communications Act of 1934, as amended,²³ we propose that any application filed for use of 700 MHz narrowband channels by a railroad police entity that is not an independent law enforcement agency would have to be accompanied by an authorization from an appropriate “state or local government entity,” *e.g.*, state or local police, or another governmental public safety licensee. We seek comment on this proposal. We also seek comment on whether we should require railroad police to obtain authorization from the same state or local governmental entity to license the VHF, UHF and 800 MHz interoperability channels or whether one authorization for each railroad police entity should suffice for all bands by default unless there is a need to restrict a band.

C. Coordination and Administration

15. For administration of the VHF and UHF interoperability channels, the Commission has previously stated that it would rely on the designated public safety frequency coordinators to “jointly develop an interoperability plan regarding the management and nationwide use of these interoperability channels.”²⁴ In contrast, administration of the 700 MHz narrowband interoperability channels is the

²⁰ *Id.*

²¹ AAR Comments at 3, quoting 47 U.S.C. § 24305(e).

²² 47 C.F.R. § 90.523(b)(1). The authorization must be in writing and as noted above cannot be used for services that the authorized entity makes commercially available to the public. 47 C.F.R. § 90.523(b)(3),(c) and (d).

²³ 47 U.S.C. § 337(f)(1).

²⁴ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No 96-86, *Third Memorandum Opinion and Order and Third Report And Order*, 15 FCC Rcd 19844,19885 ¶90 (2000) (*700 MHz Third Report and Order and Third Memorandum Opinion and Order*).

responsibility of the states, and applications for such channels must be approved by a state-level agency or organization responsible for administering state emergency communications.²⁵ States may hold the license for the interoperability channels or approve other qualified entities to hold such licenses.²⁶ States may also delegate the approval process for interoperability channels to another entity such as a Regional Planning Committee (RPC).²⁷ In at least thirteen states, and Puerto Rico and the U.S. Virgin Islands, the 700 MHz RPCs administer the approval process for the 700 MHz interoperability channels.²⁸ We propose to apply the State or RPC's coordination and administration procedures for the relevant spectrum band to applications by or on behalf of railroad police to use interoperability channels. In the event an RPC denies a railroad police request for coordination to access the interoperability channels, we propose that the reasons therefor be reported to the Public Safety and Homeland Security Bureau so that the Commission can evaluate any issues that may arise regarding coordination and administration of railroad police access. We seek comment on whether any other changes to these procedures are needed to facilitate the use of interoperability and mutual aid channels by railroad police

D. Licensing of Mobile and Portable Units

16. With respect to how we should authorize mobile and portable units for use by railroad police when those mobile and portable units are not associated with a base station license, we propose to employ a “blanket licensing” approach,²⁹ in which railroad police officers would be authorized to operate

²⁵ See 47 C.F.R. §§ 90.525(a)-(b). In 2001 the Commission decided that the states should be responsible for administration of the 700 MHz interoperability channels. See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010*, WT Dockets No. 96-86, *Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 16 FCC Rcd 2020, 2025-26 ¶¶ 11-13 (2001) (*Fourth Report and Order and Fifth NPRM*).

²⁶ 47 C.F.R. §§ 90.525. We note that the interoperability spectrum is distinct from the 700 MHz narrowband State License spectrum. *Id.* § 90.529.

²⁷ 47 C.F.R. § 90.525(b). Each state was required to notify the Commission by December 31, 2001, of its decision to administer the interoperability spectrum. See *700 MHz Public Safety Band – Announcement of Updates of Interoperability Spectrum Administration Decisions*, WT Docket 96-86, *Public Notice*, 17 FCC Rcd 16535 (WTB 2002). The following States elected to manage the interoperability spectrum either by forming a State Interoperability Executive Committee (SIEC) or by using an existing state entity to perform the functions of a SIEC: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and the District of Columbia. Subsequent to the December 31, 2001 deadline, Idaho and Ohio elected to assume responsibility for administering the interoperability channels.

²⁸ Montana specifically delegated the management of the interoperability spectrum to its 700 MHz Regional Planning Committee. The Commission received no responses from the following states prior to the December 31, 2001 deadline: Puerto Rico, the U.S. Virgin Islands, Alabama, Colorado, Georgia, Michigan, Minnesota, New Mexico, South Dakota, Vermont, West Virginia and Wyoming. Consequently, the applicable 700 MHz RPCs have the responsibility for administering the interoperability spectrum. We note however, that the RPCs for the U.S. Virgin Islands, New Mexico, North Dakota, South Dakota, and Wyoming have not adopted 700 MHz regional plans as of the date of this *NPRM*.

²⁹ The Commission has previously used blanket licensing as an efficient means to facilitate interoperability between public safety entities. In setting aside interoperability spectrum and requiring all 700 MHz equipment to be capable of operating on the 700 MHz interoperability channels, the Commission noted that it sought to ensure that all public safety entities could communicate with one another, especially during disaster situations. See *Fourth Report and Order and Fifth NPRM*, 16 FCC Rcd at 2031 ¶ 30. “Blanket licensing all public safety licensees so that they are authorized for mobile operation, rather than requiring an individual license, better supports this objective.” *Id.* The Commission noted that blanket licensing “eliminates many administrative burdens associated with licensing (*i.e.*, entities would not have to apply for a mobile license, and the Commission would not have to process the applications.)” *Id.*

on interoperability and mutual aid channels if their employer holds a Private Land Mobile Radio (PLMR) license of any category, *e.g.*, Industrial/Business (I/B). Blanket licensing for railroad police officers would parallel the provisions of Sections 90.179(j), 90.421(a)(3) and 90.525 of the Commission's rules, which explicitly authorize operation on 700 MHz interoperability channels by individuals operating under the authority of an entity licensed for any public safety frequency.³⁰ We seek comment on this proposal. We also seek comment on the alternative approach of issuing "mobile only" licenses to railroad police, *e.g.*, to accommodate railroad police in the event that their employers do not hold a PLMR license for base station infrastructure.³¹ In either case, we seek comment on the appropriate geographical area in which railroad police should be authorized to operate portable and mobile units on interoperability channels. For example, should the geographic scope of the authorization be nationwide, a fixed distance from railroad rights of way, or some other defined area?

E. Base and Control Station Operation

17. The NPSTC Petition did not advocate that railroad police be authorized to operate base stations and control stations on interoperability or mutual aid channels. Nevertheless, we seek comment on whether base and control station operation by railroad police on these channels should be allowed. If allowed, we propose that applications for base stations would have to be frequency-coordinated and, in the case of 800 MHz and 700 MHz narrowband channels, accompanied by concurrence of the relevant Regional Planning Committee.³² We seek comment on this proposed approach.

F. International Coordination

18. Operations on interoperability channels along our international borders are subject to agreements with Canada and Mexico. For instance, our agreements with Canada permit U.S. public safety licensees to communicate across the border with counterpart operators in Canada on the 700 MHz interoperability and 800 MHz mutual aid channels.³³ Our agreement with Mexico permits cross-border

³⁰ As a general matter, a public safety entity may operate mobile units on the 150-174 MHz, 220-220 MHz, 450-512 MHz, 700 MHz and 800 MHz NPSPAC interoperability channels without an individual license provided that such entity holds a Part 90 public safety license. *See, e.g. 700 MHz Third Report and Order and Third Memorandum Opinion and Order*, 15 FCC Rcd at 19885 ¶ 90 ("Public safety licensees who are eligible to hold a Part 90 license, or who are otherwise licensed under Part 90 of our Rules, can operate mobile units on these [*i.e.* 150-174 MHz and 450-512 MHz] interoperability channels without an individual license.") *citing* In the Matter of Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services, Gen Docket No. 87-112, *Report and Order*, 3 FCC Rcd 905,909 ¶¶ 30, 33-34 (1987) (base and control transmitters must be individually licensed to operate on the 800 MHz interoperability channels but all entities operating in accordance with an approved regional plan may operate mobile and portable equipment on the interoperability channels); 47 C.F.R. § 90.720(a) ("Part 90 licensees who meet the eligibility criteria of §§ 90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), or 90.20(a)(2)(xiii) are authorized by this rule to use mobile and/or portable units on Channels 161-170 throughout the United States, its territories, and possessions[.]").

³¹ Under a mobile-only authorization "a licensee may only operate hand-held or vehicular-mounted radios on the designated frequency in communication with other mobile units. The licensee may not operate or communicate with base stations on the frequency." *See, e.g. Chevron USA, Inc. and Sprint Nextel, Memorandum Opinion and Order*, WT Docket No. 02-55, 21 FCC Rcd 11313, note 10 (PSHSB 2006).

³² There are 55 Regional Planning Committees (RPCs) geographically distributed across the U.S. that administer the 800 MHz NPSPAC channels and the 700 MHz General Use channels.

³³ *See* Sharing Agreement Between the Department of Industry Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 768-776 MHz and 798-806 MHz by the Land Mobile Service Along the Canada-United States Border at ¶ 3.2.4 (May 10, 2013) (Arrangement Q); Sharing Arrangement Between the Department of Industry of Canada and The Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 806-824

(continued....)

use of the 800 MHz mutual aid channels, but does not extend to 700 MHz channels.³⁴ In the VHF and UHF bands, no specific channels are designated for cross-border communications with either Canada or Mexico, but licensees are permitted to use VHF or UHF channels on an *ad hoc* basis for cross-border interoperability communications provided all licensees on both sides of the border are properly licensed.³⁵

19. We seek comment on how to address international coordination issues if we adopt our proposal to authorize railroad police use of U.S. interoperability channels. We propose that railroad police be allowed to use interoperability channels to communicate along and across the border with counterpart operators in Canada and Mexico to the same extent as any other eligible public safety entity, consistent with international agreements or existing rules applicable to the relevant spectrum band. We seek comment this proposal.

G. Encryption

20. We note that Sections 90.553 and 90.531 of the Commission's rules³⁶ prohibit the use of encryption on the 700 MHz narrowband interoperability calling channels and believe that, as a matter of best practice, encryption should not be used on the interoperability calling channels in other bands. Encryption, however, may be useful on tactical interoperability channels, so long as a common encryption method is employed and the appropriate encryption keys distributed to all authorized users.³⁷ As an alternative to relying on best practices, we seek comment on whether to amend our rules to make clear that encryption may not be used on any of the interoperability calling channels by railroad police or any other eligible user.

H. Potential Alternative Authorization Approaches.

21. *Operation of Mobile Units Not Under the Control of the Licensee.* We seek comment on whether the interoperability goals of this proceeding could also be accomplished through existing rules as an alternative to our main proposal. In addition to the blanket licensing and mobile-only licensing approaches discussed *supra*, we note AAR's observation that, while the Commission's current rules do not contemplate railroad police holding licenses for public safety interoperability frequencies, Section 90.421 permits some use of those frequencies by persons not holding a public safety license.³⁸ Specifically, Section 90.421 provides that mobile stations, which include vehicular-mounted and hand-held units, "may be operated by persons other than the licensee" as provided in that section, "when necessary for the licensee to meet its requirements in connection with the activities for which it is

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MHz, and 851-869 MHz by the Land Mobile Service Along the Canada -United States Border at ¶ 3.2.3 (August 1, 2011) (Arrangement F).

³⁴ See Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border at Article III, ¶ 2 (June 8, 2012) (Mexico Protocol).

³⁵ Operations along the Canada border in the VHF and UHF bands are covered under an exchange of notes between the U.S. and Canada Governments. See Exchange of Notes between the Government of the United States of America and the Government of Canada Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second, with Annexes, as amended (October 24, 1962) (Above 30 MHz Agreement). The U.S. and Mexico have no formal agreement covering the VHF and UHF bands.

³⁶ 47 C.F.R. §§ 90.553, 90.531.

³⁷ 47 C.F.R. § 90.553(b) ("If encryption is employed, then transmitters manufactured after August 11, 2014 must use the Advanced Encryption Standard (AES) specified in ANSI/TIA-102.AA4-A: Project 25 Digital Land Mobile Radio-Block Encryption Protocol, approved August 20, 2009. Until 2030, manufacturers may also include the Digital Encryption Standard (DES) or Triple Data Encryption Algorithm (TDEA), in addition to but not in place of AES, for compatibility with legacy radios that lack AES capability.")

³⁸ AAR Comments at 6.

licensed.”³⁹ Section 90.421(a)(1) provides that mobile units “may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee.”⁴⁰

22. AAR argues that Section 90.421 authorizes mobile units to be installed on trains where, in an emergency, railroad employees would need to cooperate and coordinate with State police.⁴¹ AAR requests that any notice of proposed rulemaking not curtail what it characterizes as an important ability of non-licensees to communicate with public safety entities.⁴² MSI similarly recommends that the Commission “clarify that public safety licensees such as state police agencies have the flexibility under Section 90.421 of the Rules to contract with railroad police departments.”⁴³

23. As an alternative to our main proposal, we therefore seek comment on whether we should rely on Section 90.421 instead of licensing railroad police on interoperability channels. We note that if we were to do so, railroad police use of public safety spectrum under this rule could extend to other channels besides the interoperability channels. Thus we seek comment on whether it is desirable to permit railroad police access to public safety channels other than interoperability and mutual aid channels. We also seek comment on whether to amend Section 90.421 to more explicitly provide (1) that VHF, UHF and 800 MHz mobile and portable units may be operated by railroad police on the interoperability and mutual aid channels in an emergency; and (2) that railroad police when performing public safety services within the meaning of Section 337(f)(1)⁴⁴ of the Communications Act of 1934, as amended, may communicate using the 700 MHz public safety narrowband interoperability channels.⁴⁵

24. *Shared Use of Radio Stations.* Generally, Part 90 licensees may share the use of their radio stations, including base and control stations and mobiles and portables, pursuant to Section 90.179 of the rules.⁴⁶ Under Section 90.179, “[a] station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee’s authorization.” Shared use “may be either on a non-profit cost shared basis or on a for-profit private carrier basis.”⁴⁷ However, “[p]ersons may share a radio station only on frequencies for which they would be eligible for a separate authorization.”⁴⁸ There is, however, an exception made for Federal Government entities. Section

³⁹ 47 C.F.R. § 90.421. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. *Id.* The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control. *Id.*

⁴⁰ 47 C.F.R. § 90.421(a)(1). “This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.” *Id.* Section 90.421 also provides that [m]obile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordination is required for medical services activities.” 47 C.F.R. § 90.421(a)(2).

⁴¹ AAR Comments at 6.

⁴² *Id.*

⁴³ MSI Comments at 3 *citing* 47 C.F.R. § 90.421.

⁴⁴ 47 U.S.C. § 337(f)(1).

⁴⁵ 47 C.F.R. § 90.421(a)(3).

⁴⁶ 47 C.F.R. § 90.179.

⁴⁷ *Id.* “If the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement between the licensee and each participant which sets out (1) the method of operation, (2) the components of the system which are covered by the sharing arrangements, (3) the method by which costs are to be apportioned, and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control. These agreements must be kept as part of the station records.” 47 C.F.R. § 90.179(d).

⁴⁸ 47 C.F.R. § 90.179(a).

90.179(g) of the Commission's rules establishes that "licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis."⁴⁹

25. Accordingly, as an alternative to the NPSTC proposal, we seek comment on whether sharing arrangements would be a viable alternative to address the interoperability needs of public safety and railroad police officers instead of licensing railroad police on the interoperability and mutual aid channels. Should we amend the rules to permit public safety licensees that are already licensed on the interoperability and mutual aid channels to share their facilities on a non-profit cost-shared basis with railroad police, similar to sharing with Federal Government entities?

I. Nationwide Interoperability and Mutual Aid Channels

26. Finally, we propose to simplify our rules to further promote railroad police interoperability with Federal, State, Local and Tribal public safety entities. Specifically, we propose to list the nationwide interoperability channels in Section 90.20(i) of the Commission's rules.⁵⁰

IV. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

27. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b).⁵² In proceedings governed by Section 1.49(f)⁵³ or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Procedures

28. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the

⁴⁹ 47 C.F.R. § 90.179(g). Additionally, Section 90.179(h) already provides that Industrial/Business licensees, such as railroad "licensees, authorized to operate radio systems on Industrial/Business Pool frequencies designated in §90.35 may share their facilities with Public Safety Pool entities designated in § 90.20 and with Federal Government entities on a non-profit, cost-shared basis." 47 C.F.R. § 90.179(h).

⁵⁰ 47 C.F.R. § 90.20(i).

⁵¹ 47 C.F.R. §§ 1.1200 *et seq.*

⁵² 47 C.F.R. § 1.1206(b).

⁵³ 47 C.F.R. § 1.49(f).

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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

29. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the numerals in the docket number. (4) Click on the box marked "Retrieve Document List." A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The public may also download this Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking from the Commission's web site at <http://www.fcc.gov/>.

C. Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *NPRM*. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed by the same dates as listed on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

⁵⁴ 5 U.S.C. § 603.

D. Paperwork Reduction Analysis

31. This *NPRM* contains proposed new or modified information collection requirements. Specifically, the Commission seeks comment on rule changes that would expand eligibility for interoperability and mutual aid channels, thus revising the number of respondents subject to certain existing information collection requirements (*i.e.* ICR Reference Number: 201403-3060-018, OMB Control No. 3060-0805; ICR Reference Number: 201311-3060-018, OMB Control No. 3060-0798; ICR Reference Number: 200111-3060-016, OMB Control No. 3060-0262; ICR Reference Number: 201404-3060-023, OMB Control No. 3060-1198).⁵⁵ Moreover, the requirement *supra*, paragraph 14, that any application filed by a railroad police entity for use of 700 MHz narrowband channels would have to be accompanied by an authorization from such “state or local government entity,” *e.g.*, state or local police, or a governmental public safety licensee, proposes a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before 60 days after publication of the Notice in the *Federal Register*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

E. Further Information

32. For further information, contact John A. Evanoff, Attorney-Advisor, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, at (202) 418-0848, or by email to john.evanoff@fcc.gov.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 301, 303, 316, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303, 316, , and 337, that this *Notice of Proposed Rulemaking* is hereby ADOPTED.

34. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁵ The Commission, however, does not propose to change the wording of these existing information collections. *See* Controlling Paperwork Burdens on the Public, 48 FR 13666, 13683 (1983) (discussing 5 C.F.R. § 1320.5(g) (previously 1302.11(h))).

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. The *NPRM* is intended to determine whether it is in the public interest, convenience and necessity to amend the Part 90 rules to reduce regulatory barriers and facilitate railroad police access to public safety interoperability and mutual aid channels. Specifically, in response to a Petition for Rulemaking filed by the National Public Safety Telecommunications Council (NPSTC), the *NPRM* seeks comment on expanding eligibility to allow railroad police officers employed by a Class I, Class II and Class III railroad as defined by the U.S. Department of Transportation's Surface Transportation Board (STB) and recognized by the Federal Railroad Administration (FRA) to operate on public safety interoperability channels in the VHF and UHF bands below 512 MHz, 700 MHz narrowband and 800 MHz NPSPAC band. Commenters were uniformly supportive of the NPSTC proposal, which the Public Safety and Homeland Security Bureau placed on *Public Notice*. These commenters, including the U.S. Department of Transportation, cited the safety of life and property role that railroad police officers play in emergencies. In certain emergencies, such as accidents involving railroads or security incidents involving the U.S. rail network, public safety personnel may need to communicate with railroad police. Additionally, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Recommendations Act), which provides that railroad grant funding may be used, *inter alia*, to acquire "communications equipment, including equipment that is interoperable with Federal, State, and local agencies and tribal governments[.]" Therefore, in light of the record and expression of Congressional intent, the *NPRM* seeks comment on amending the eligibility rules applicable to interoperability spectrum.

3. As discussed in Sections D and E of this IRFA, the Commission has endeavored to keep the burdens associated with this rule change as simple and minimal as possible. The *NPRM* seeks comment on requiring railroad police officers to obtain governmental authorization to operate on the 700 MHz interoperability channels as required by Section 90.523 of the Commission's rules and Section 337(f)(1) of the Communications Act of 1934, as amended. Further, the *NPRM* seeks comment on requiring railroad police officers seeking to license the interoperability channels to obtain frequency coordination and submit a license application, in the event that it is decided that railroads can operate base and control stations on interoperability channels. Additionally, the *NPRM* seeks comment on alternatives to licensing on the interoperability channels in order to minimize the burden on railroad entities, as discussed in Section E of the IRFA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

4. Finally, we propose to update Sections 90.20 of the Commission's rules to explicitly identify the nationwide interoperability channels to facilitate interoperability among Federal, State, Local, Tribal and Railroad Police entities. The Commission concludes that it is necessary to eliminate uncertainty and to codify the flexible licensing approach concerning the use of all the public safety interoperability channels. These proposed actions are taken under Sections 1, 2, 4(i), 4(j), 301, 303, 316, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303, 316, and 337.

B. Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The official count of local governments in the United States for 2012 was 90,056, comprising 38,910 general-purpose governments and 51,146 special-purpose governments. General purpose governments include those classified as counties, municipalities, and townships.⁶ For this category, census data for 2012 shows that there were approximately 37,132 counties, cities and towns that have populations of fewer than 50,000.⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹ Below, we describe and estimate the number of small entities that may be affected by the rules changes proposed in this *NPRM*.

6. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. Because of the vast array of PLMR users, which includes railroads, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons¹⁰ For this category, census data

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ http://www2.census.gov/govs/cog/g12_org.pdf.

⁷ <http://www.census.gov/govs/cog> at Tables 6 (County Governments by Population-Size Group and State: 2012) and 7 (SubCounty General-Purpose Governments by Population-Size Group and State: 2012) (released September 2013).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

⁹ Small Business Act, 15 U.S.C. § 632 (1996).

¹⁰ *See* 13 C.F.R. § 121.201, NAICS code 517210.

for 2007 show that there were 11,163 establishments that operated for the entire year.¹¹ Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.¹² Under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.¹³ The Commission, however, does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹⁴

7. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities may be eligible licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. According to the Commission's records, there were (1) 1,318 public safety licensees licensed on at least one of the VHF and UHF public safety interoperability channels; (2) 59 public safety licensees licensed on at least one of the narrowband interoperability channels in the public safety band between 764–776 MHz/794–806 MHz; and (3) 4,715 public safety licensees operating in the public safety band between 806–809/851–854 MHz (NPSPAC band). In total there are 6,092 public safety entities, including small governmental jurisdictions, licensed to operate on at least one of the interoperability and mutual aid channels.

8. *Class I, Class II, and Class III Railroads.* NPSTC proposes expanding eligibility to operate on the interoperability channels to include full-time railroad police employed by a Class I, II, or III railroad, as defined by the STB and recognized by the FRA. The SBA stipulates “size standards” for small entities. It provides that the largest a for-profit railroad business firm may be and still be classified as a “small entity” is 1,500 employees for “Line-Haul” railroads, and 500 employees for “Short-Line” railroads.¹⁵ SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, the FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a “Class III railroad.”¹⁶ This threshold is based on the STB's threshold for a

¹¹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

¹²

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=tableId. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

¹³ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table

¹⁴ See generally 13 C.F.R. § 121.201.

¹⁵ See 13 C.F.R. § 121.201, NAICS codes 482111 and 482112. Line-haul railroads are primarily engaged in operating railroads for the transport of passengers and/or cargo over a long distance within a rail network. These establishments provide for the intercity movement of trains between the terminals and stations on main and branch lines of a line-haul rail network (except for local switching services). Short-line railroads are primarily engaged in operating railroads for the transport of cargo over a short distance on local rail lines not part of a rail network.

¹⁶ See [68 Fed. Reg. 24891](#) (May 9, 2003).

Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.¹⁷ Consistent with FRA's approach, we are using this definition for this rulemaking. Approximately 700 railroads meet the criteria for small entity. We are using this as our estimate of the universe of small entities that could be directly impacted by the proposed rule.

9. The *NPRM* seeks comment on expanding eligibility to operate on the interoperability channels. The primary beneficiaries of this increased flexibility would be railroads, including small railroads, and PLMR licensees, including small governmental jurisdictions, that have a need to interoperate with each other. The FCC notes that the requirement that railroads obtain governmental authorization to operate on the 700 MHz interoperability channels is statutorily required and the Commission is without authority to exempt railroads from this requirement. Additionally, railroad entities may be required to obtain frequency coordination and submit a license application on FCC Form 601 in order to license, construct and operate base and control stations on the interoperability channels. The *NPRM* seeks comment on additional flexibility that may reduce the impact on railroad police officers operating on the interoperability channels. Those alternatives are discussed in Section E.

C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. This *NPRM* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The *NPRM* seeks comment on whether railroad police officers who are certified and/or commissioned as a police officer under the laws of any state, in accordance with the regulations issued by the Secretary of the U.S. Department of Transportation and employed full time as a railroad police officer for a Class I, II, or III railroad, as defined by the U.S. Department of Transportation's Surface Transportation Board and recognized by the Federal Railroad Administration (FRA) should be eligible to operate on the nationwide interoperability and mutual aid channels specified in Sections 90.20 and 90.525 of the Commission's rules. The *NPRM* also seeks comment on alternatives for defining eligible railroad police officers, including expanding the definition to include part-time rail police and Amtrak consistent with FRA regulations. The *NPRM* seeks comment on its tentative conclusion that the definition of railroad police officers established by the Department of Transportation best captures the eligibility criteria for railroad police use of the interoperability and mutual aid channels.

11. The *NPRM* also seeks comment on requiring railroad police officers to obtain governmental authorization to operate on the 700 MHz interoperability channels as required by Section 90.523 of the Commission's rules and Section 337(f)(1) of the Communications Act of 1934, as amended. In accordance with the Paperwork Reduction Act, the Office of Management and Budget (OMB) has already approved the collection of state and local government certifications from non-governmental organizations that seek to operate on the 700 MHz narrowband channels. See ICR Reference Number: 201403-3060-018, OMB Control No. 3060-0805. The nationwide interoperability and mutual aid channels are designed to meet a variety of public safety interoperability needs, but railroad entities have traditionally been licensed in the Industrial/Land Transportation/Business spectrum bands and thus have not been subject to the licensing requirements applicable to the interoperability and mutual aid channels. We do not propose to change the wording of the OMB-approved collection in any material or substantive manner, but we do seek to determine whether railroad police meet the statutory eligibility criteria to operate on the 700 MHz interoperability channels. If so, then only the number of respondents would change as we would expect that railroad police officers will comply with these existing statutory requirements and regulations, which are the minimum necessary to ensure effective use of the spectrum and to minimize interference potential to public safety entities, including State, local and tribal governments. Thus, requiring railroad police to obtain governmental authorization in order to operate on

¹⁷ See 49 CFR Part 1201.

the 700 MHz interoperability channels would increase the number of respondents by approximately 763 entities. *See* ICR Reference Number: 201308-2130-009, OMB Control No. 2130-0537.

12. The *NPRM* also seeks comment on licensing base and control stations on the interoperability and mutual aid channels. The *NPRM* notes that licensing base and controls stations would require frequency coordination (*e.g.* railroad police officers would be required to submit a license application on Form 601 demonstrating evidence of frequency coordination). Similarly, mobile-only authorizations require frequency coordination and submission of FCC form 601. Railroad entities seeking licenses in the Industrial Land Transportation and Business Pool are required to obtain coordination from certain frequency coordinators as specified in Section 90.35 of the Commission's rules. However, the interoperability and mutual aid channels are subject to frequency coordination from the four certified public safety frequency coordinators as specified in Section 90.20(c). OMB has already approved the information collection requirements, including frequency coordination requirement associated with Form 601. *See* ICR Reference Number: 201311-3060-018, OMB Control No. 3060-0798. We do not propose any substantive or material changes to the wording of the existing information collection. Instead, if we amend to rules to allow railroad police officers to license the interoperability and mutual aid channels, then the number of respondents subject to the existing information collections would increase by approximately 763 entities.

13. Additionally, the *NPRM* notes that the 700 MHz interoperability channels are administered by State entities and/or regional planning committees. OMB has already approved the information collections associated with obtaining State/RPC concurrence to operate on the 700 MHz interoperability channels. *See* ICR Reference Number: 201404-3060-023, OMB Control No. 3060-1198. We do not propose any substantive or material changes to the wording of this existing information collection but if we allow railroad police to operate on these interoperability channels, then the number of respondents subject to the existing information collections would increase by approximately 763 entities.

14. The *NPRM* also seeks comment on less burdensome alternatives to licensing, constructing and operating base stations on the interoperability and mutual aid channels. Specifically, the *NPRM* seeks comment on allowing railroad police officers to (1) operate mobile stations on these channels under a "blanket" licensing approach or (2) allowing public safety licensees to share their facilities with railroad police pursuant to a sharing agreement. With regard to blanket licensing, we would essentially clarify that Section 90.421 permits railroad police to operate mobile stations so long as their employer holds a PLMR license and therefore would not impose any new or modified information collections requirements. However, allowing public safety entities to "share" their facilities with railroad police would require reducing such an arrangement into writing as required by Section 90.179. OMB has already approved the information collection requirements in Section 90.179 and we do not propose any substantive or material changes to the wording of the existing information collection. *See* ICR Reference Number: 200111-3060-016, OMB Control No. 3060-0262. If we amend the eligibility rules, then the number of respondents would increase by approximately 763 entities.

15. The Commission believes that applying the same information collection rules equally to public safety and railroad police entities in this context will promote interoperability and advance Congressional objectives. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The rule revisions the Commission proposes should benefit public safety and railroad police entities by giving them more flexibility, and more options for gaining access to interoperability and mutual aid spectrum. As noted above, the FCC invites comment on these new or modified information collection requirements.

16. Finally, the rule amendment proposed relative to Section 90.20(i) has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

D. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.¹⁸ We have evaluated our proposals in this *NPRM* in the context of small business entities and find no alternatives, to the benefit of small entities that would achieve our goals of facilitating interoperability between public safety entities and railroad police officers and efficient use of nationwide interoperability spectrum. Additionally, this *NPRM* proposes rules that are deregulatory in nature and consistent with Federal railroad interoperability mandates. Accordingly, the proposed rule changes minimize any significant economic impact on small entities.

18. The *NPRM* also seeks comment on four alternatives that may minimize the impact on small entities, including small railroads. First, the *NPRM* seeks comment on issuing a mobile-only license that would allow railroad police officers to operate mobiles on the interoperability channels without having to construct and operate base and control stations. Second, the *NPRM* seeks comment on “blanket licensing”, an approach that would allow railroad police officers to operate on the interoperability channels provided their railroad employer already holds a license for PLMR spectrum. Third, the *NPRM* seeks comment on amending Section 90.421 of the Commission’s rules to allow railroad police officers to operate mobiles under the license of public safety licensees. Fourth, the *NPRM* seeks comment on amending Section 90.179 to allow public safety entities to “share” their facilities with railroad police. Any significant alternative presented in the comments will be considered.

19. Finally, we propose to amend Section 90.20 of the Commission’s rules to explicitly identify the nationwide interoperability channels *i.e.* the VHF, UHF and 700 MHz interoperability channels, and on the 800 MHz mutual aid channels. We believe that flexible licensing policies are necessary to encourage the use of the most spectrally efficient technology to meet user-defined needs. Recognizing the budgetary constraints that small public safety entities face, we seek to make explicit in the Commission’s rules the flexible licensing approach that the Commission previously adopted for all of the public safety interoperability channels.

F. Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

20. None.

¹⁸ 5 U.S.C. § 603(c)(1)-(4).

APPENDIX B
Proposed Rules

Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 90 – Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.20 is proposed to be amended by adding paragraphs (a)(2)(xiv) and (i) as follows:

(a)(2)(xiv) Railroad police officers are a class of users eligible to operate on the nationwide interoperability and mutual aid channels listed in 90.20(i). Eligible users include part time railroad police officers and Amtrak employees who qualify as railroad police officers under this subsection. Railroads and railroad police departments may obtain licenses for the nationwide interoperability and mutual aid channels of behalf of railroad police officers in their employ. Additionally, railroad police officers may be authorized to operate on interoperability and mutual aid channels if their employer holds a Private Land Mobile Radio (PLMR) license of any radio category, including Industrial/Business (I/B).

(a) Railroad police officer means peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(b) Commissioned means that a state official has certified or otherwise designated in writing a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(c) Property means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

(i) Nationwide Interoperability Channels. The nationwide interoperability channels are listed below for the VHF, UHF, 700 MHz and 800 MHz bands. (See §§ 90.20(d)(80), 90.531(b)(1), 90.617(a)(1) and 90.720). Any licensee holding a Part 90 public safety license may operate hand-held and vehicular mobile units on these channels without needing a separate authorization. Base stations or control stations operating on these channels must be licensed separately:

<u>VHF Interoperability Channel (MHz)</u>	<u>Purpose</u>
151.1375 MHz (base/mobile)	Tactical
154.4525 MHz (base/mobile)	Tactical
155.7525 MHz (base/mobile)	Calling

158.7375 MHz (base/mobile)	Tactical
159.4725 MHz (base/mobile)	Tactical

<u>VHF Mutual Aid Channel (MHz)</u>	<u>Purpose</u>
220.8025 MHz (base/mobile)	Tactical
220.8075 MHz (base/mobile)	Tactical
220.8125 MHz (base/mobile)	Tactical
220.8175 MHz (base/mobile)	Tactical
220.8225 MHz (base/mobile)	Tactical
220.8275 MHz (base/mobile)	Tactical
220.8325 MHz (base/mobile)	Tactical
220.8375 MHz (base/mobile)	Tactical
220.8425 MHz (base/mobile)	Tactical
220.8475 MHz (base/mobile)	Tactical

<u>UHF Interoperability Channel (MHz)</u>	<u>Purpose</u>
453.2125 MHz (base/mobile) 458.2125 MHz (mobile)	Calling
453.4625 MHz (base/mobile) 458.4625 MHz (mobile)	Tactical
453.7125 MHz (base/mobile) 458.7125 MHz (mobile)	Tactical
453.8625 MHz (base/mobile) 458.8625 MHz (mobile)	Tactical

<u>700 MHz Interoperability Channel (MHz)</u>	<u>Purpose</u>
769.14375 MHz (base/mobile) 799.14375 MHz (mobile)	Tactical
769.24375 MHz (base/mobile) 799.24375 MHz (mobile)	Calling
769.39375 MHz (base/mobile) 769.39375 MHz (mobile)	Tactical
769.49375 MHz (base/mobile) 799.49375 MHz (mobile)	Tactical
769.64375 MHz (base/mobile) 799.64375 MHz (mobile)	Tactical
769.74375 MHz (base/mobile) 799.74375 MHz (mobile)	Tactical
769.99375 MHz (base/mobile) 799.99375 MHz (mobile)	Tactical
770.14375 MHz (base/mobile) 800.14375 MHz (mobile)	Tactical
770.24375 MHz (base/mobile) 800.24375 MHz (mobile)	Tactical
770.39375 MHz (base/mobile) 800.39375 MHz (mobile)	Tactical
770.49375 MHz (base/mobile)	Tactical

800.49375 MHz (mobile)	
770.64375 MHz (base/mobile) 800.64375 MHz (mobile)	Tactical
770.89375 MHz (base/mobile) 800.89375 MHz (mobile)	Tactical
770.99375 MHz (base/mobile) 800.99375 MHz (mobile)	Tactical
773.00625 MHz (base/mobile) 803.00625 MHz (mobile)	Tactical
773.10625 MHz (base/mobile) 803.10625 MHz (mobile)	Tactical
773.25625 MHz (base/mobile) 803.25625 MHz (mobile)	Calling
773.35625 MHz (base/mobile) 803.35625 MHz (mobile)	Tactical
773.50625 MHz (base/mobile) 803.50625 MHz (mobile)	Tactical
773.60625 MHz (base/mobile) 803.60625 MHz (mobile)	Tactical
773.75625 MHz (base/mobile) 803.75625 MHz (mobile)	Tactical
773.85625 MHz (base/mobile) 803.85625 MHz (mobile)	Tactical
774.00625 MHz (base/mobile) 804.00625 MHz (mobile)	Tactical
774.10625 MHz (base/mobile) 804.10625 MHz (mobile)	Tactical
774.25625 MHz (base/mobile) 804.25625 MHz (mobile)	Tactical
774.35625 MHz (base/mobile) 804.35625 MHz (mobile)	Tactical
774.50625 MHz (base/mobile) 804.50625 MHz (mobile)	Tactical
774.60625 MHz (base/mobile) 804.60625 MHz (mobile)	Tactical
774.85625 MHz (base/mobile) 804.85625 MHz (mobile)	Tactical

<u>800 MHz Mutual Aid Channel (MHz)</u>	<u>Purpose</u>
851.0125 MHz (base/mobile) 806.0125 MHz (mobile)	Calling
851.5125 MHz (base/mobile) 806.5125 MHz (mobile)	Tactical
852.0125 MHz (base/mobile) 807.0125 MHz (mobile)	Tactical
852.5125 MHz (base/mobile) 807.0125 MHz (mobile)	Tactical
853.0125 MHz (base/mobile) 808.0125 MHz (mobile)	Tactical

2. Section 90.720 is proposed to be amended by revising paragraphs (a); (a)(2) and (b) as follows:

A. §90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees who meet the eligibility criteria of §§90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) or 90.20(a)(2)(xiv) are authorized by this rule to use mobile and/or portable units on Channels 161-170 throughout the United States, its territories, and possessions to transmit:

(2) Communications to facilitate interoperability among entities eligible under §§90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) and 90.20(a)(2)(xiv); or

(b) Any Government entity and any non-Government entity eligible to obtain a license under §§90.20(a)(1), 90.20(a)(2)(i), 90.20(a)(2)(ii), 90.20(a)(2)(iii), 90.20(a)(2)(iv), 90.20(a)(2)(vii), 90.20(a)(2)(ix), 90.20(a)(2)(xiii) or 90.20(a)(2)(xiv) is also eligible to obtain a license for base/mobile operations on Channels 161 through 170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability among the above-specified entities, may only be conducted on a secondary non-interference basis to such communications.

APPENDIX C
List of Commenters

I. COMMENTS

Adrian & Blissfield Railroad Company
American Short Line and Regional Railroad Association
Association of American Railroads
Benjamin Black
Motorola Solutions, Inc.
U.S. Department of Transportation and Federal Railroad Administration

II. REPLY COMMENTS

None

III. *EX PARTE* FILINGS

None

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Amendment of Part 90 of the Commission's Rules to Enable Railroad Police Officers to Access Public Safety Interoperability and Mutual Aid Channels*, PS Docket No. 15-199, RM-11721, Notice of Proposed Rulemaking

Fast, efficient, and effective communications between law enforcement agencies and emergency response personnel is a critical part of ensuring public safety. With this rulemaking the Commission takes steps to improve these communications by seeking comment on the use of public safety spectrum channels by railroad police. This is critical because railroad authorities are responsible for protecting the public both at train stations and along railways throughout the country. Moreover, as first responders they require common communications to respond effectively to fires, derailments, and other emergencies.

I look forward to the record that develops in this proceeding. I also want to thank the National Public Safety Telecommunications Council for submitting a petition on this matter and the International Association of Chiefs of Police and Senator Charles Schumer for supporting the call for strengthened public safety communications for our nation's railroads.