

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

REPORT AND ORDER

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By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. DISCUSSION ..... 2
A. Railroad Police Access to Interoperability Channels..... 5
B. Defining Railroad Police Officers ..... 9
C. Licensing..... 13
D. Need for Governmental Agency Authorization..... 15
E. Base and Control Station Operation and Frequency Coordination..... 25
F. State and Regional Coordination and Administration ..... 31
G. Blanket Licensing Mobile and Portable Units..... 37
H. Operation of Mobile Units Not Under the Control of the Licensee..... 45
I. International Coordination..... 47
J. Encryption and Nationwide Interoperability Channels..... 50
K. Oil and Gas Companies ..... 52
III. PROCEDURAL MATTERS..... 54
A. Final Regulatory Flexibility Analysis..... 54
B. Paperwork Reduction Analysis..... 55
C. Congressional Review Act..... 56
IV. ORDERING CLAUSES..... 57
APPENDIX A – FINAL RULES
APPENDIX B – FINAL REGULATORY FLEXIBILITY ANALYSIS
APPENDIX C – LIST OF COMMENTERS

I. INTRODUCTION

1. In this Report and Order we amend our rules to permit railroad police officers to use public safety interoperability channels to communicate with public safety entities already authorized to use those channels.1 Specifically, we permit railroad police officers empowered to carry out law

1 While the Commission's rules refer to "interoperability channels" in certain public safety bands and to "mutual aid channels" in other public safety bands, these terms are functionally synonymous. For purposes of this order, we refer to all such channels collectively as "interoperability channels" unless otherwise indicated.

enforcement functions to use public safety interoperability channels in the VHF (150-174 MHz,<sup>2</sup> and 220-222 MHz,<sup>3</sup> UHF (450-470 MHz),<sup>4</sup> 700 MHz narrowband (769–775/799–805 MHz)<sup>5</sup> and 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) bands (806-809/851-854 MHz).<sup>6</sup> Allowing railroad police officers to use these channels will promote interoperability, facilitate improved emergency response in railroad-related emergencies, and streamline access to these channels for emergency public safety communications.

## II. DISCUSSION

2. Promoting interoperability -- to ensure that emergency responders from different jurisdictions and disciplines can communicate with each other -- is a critical goal of the Commission's public safety objectives. Interoperability channels are used for sudden emergency and disaster response situations, which call for the widest possible access by various Federal, state, local and tribal government public safety agencies. The Commission has fostered interoperability by requiring or promoting common technical standards and designating radio channels in the VHF (including 220-220 MHz), UHF, 700 MHz narrowband<sup>7</sup> and 800 MHz<sup>8</sup> spectrum bands specifically for interoperability purposes. The Commission has also provided for state and regional administration of the 700 MHz and 800 MHz interoperability channels to promote regional, state and local interoperable systems.<sup>9</sup> These rules and administrative procedures minimize the potential for miscommunication when large numbers of first responders from multiple governmental agencies and public safety disciplines access interoperability channels during an emergency.

3. In May 2014, the National Public Safety Telecommunications Council (NPSTC) submitted a Petition for Rulemaking (NPSTC Petition) requesting that the Commission amend its rules to

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<sup>2</sup> The Commission has designated five VHF frequencies (151.1375, 154.4525, 155.7525, 158.7375, and 159.4725 MHz) for interoperability. *Development of Operational, Technical, and Spectrum Requirements for Meeting, Federal, State and Local Public Safety Agency Communication Requirements Through the Year*, Third Report and Order, 15 FCC Rcd 19844, 19882-83 para. 87 (2000) (*Third Report and Order*).

<sup>3</sup> The 220-222 MHz VHF band includes ten channels available for public safety and mutual aid (channels 161-170).

<sup>4</sup> The Commission has designated four UHF channel pairs (453/458.2125, 453/458.4625, 453/458.7125, and 453/458.8625 MHz) for interoperability. *See Third Report and Order*, 15 FCC Rcd at 19883 para. 84.

<sup>5</sup> The Commission has designated thirty-two paired narrowband (12.5 kilohertz) channels in the 700 MHz narrowband spectrum for nationwide interoperable voice and data communications.

<sup>6</sup> The National Public Safety Policy Advisory Committee (NPSPAC) band includes five channels designated for nationwide interoperable voice communications. *See* 47 CFR § 90.617(a)(1).

<sup>7</sup> In 2001, the Commission adopted the ANSI 102 - Project 25 (P25) common air interface interoperability standard in the 700 MHz narrowband (voice and low speed data) allocation, designating 32 paired 12.5 kHz channels for nationwide interoperable voice and data communications, administered by states or regional planning committees. *See* 47 CFR §§ 90.531 and 90.548.

<sup>8</sup> For the VHF, UHF and 800 MHz interoperability and mutual aid channels, the Commission has required that mobile and portables have analog FM capability when operating on these channels. *See Emission Mask Requirements for Digital Technologies on the 800 MHz NPSPAC Channels; Analog FM Capability on Mutual Aid and Interoperability Channels*, Notice of Proposed Rulemaking, 28 FCC Rcd 13403 (2013); Report and Order, 31 FCC Rcd 4250, (2016)

<sup>9</sup> *See, e.g., 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*, Report and Order, 3 FCC Rcd 905 (1987); *Development of Operational, Technical, and Spectrum Requirements for Meeting, Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152 (1998).

allow railroad police to gain access to public safety interoperability channels.<sup>10</sup> The Public Safety and Homeland Security Bureau (Bureau) placed the NPSTC Petition on Public Notice.<sup>11</sup> Commenters uniformly supported the NPSTC proposal, citing the safety of life and property role that railroad police officers play in emergencies.<sup>12</sup>

4. On September 1, 2015, we released a *Notice of Proposed Rulemaking (NPRM)*, which proposed providing railroad police officers with access to the designated public safety interoperability channels in the VHF (including 220-222 MHz), UHF, 700 MHz and 800 MHz bands.<sup>13</sup> Based on the comments and replies to the *NPRM*,<sup>14</sup> we adopt the following rule changes and clarifications to facilitate railroad police officer access to the interoperability channels. Specifically, we:

- Use the term state, herein, to encompass states, territories and the District of Columbia unless the context requires otherwise.
- Incorporate into our rules a definition of railroad police officer consistent with the Federal Railroad Administration (FRA) definition.
- Require that railroads or railroad police departments obtain approval from a state or state-designated interoperability coordinator in every state in which the railroad proposes to operate before railroad police officers may operate fixed infrastructure on the 700 MHz interoperability channels;
- Require that applications for fixed infrastructure comply with the Commission's frequency coordination requirements as well as existing state and regional administration of the interoperability channels before an application may be submitted to the Commission;
- Require that railroad police employers enter into a Memorandum of Understanding (MOU) with the relevant state, state-designated interoperability coordinators before railroad police officers may begin operating mobile and portable units on the public safety interoperability channels under a blanket license;
- Permit railroads and railroad police departments to obtain mobile-only licenses subject to frequency coordination and state or regional interoperability administration;
- Enable railroad police to operate mobile units under contract with public safety licensees pursuant to Section 90.421 of the Commission's rules;<sup>15</sup>

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<sup>10</sup> Petition for Rulemaking of the National Public Safety Telecommunications Council, (NPSTC), RM-11721 (filed May 27, 2014) (Petition).

<sup>11</sup> 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, Public Notice, 29 FCC Rcd 5852 (PSHSB 2014).

<sup>12</sup> *Amendment of Part 90 of the Commission's Rules to Enable Railroad Police Officers to Access Public Safety Interoperability and Mutual Aid Channels*, Notice of Proposed Rulemaking, 30 FCC Rcd 10244, 10245-46 para. 5 (2015) (*NPRM*) (Commissioner Rosenworcel issuing a separate statement).

<sup>13</sup> *Id.*

<sup>14</sup> The following individuals and entities filed comments responsive to the *NPRM*: American Petroleum Institute (API); Association of American Railroads and America Short Line Railroad Association (AAR/ASLRRA); APCO; Heather Plummer; Illinois State Interoperability Executive Committee, Technology Sub-Committee (Illinois SIEC); Motorola Solutions Inc. (Motorola Solutions); NPSTC; National Regional Planning Council (NRPC); Region 13 and 54 Regional Planning Committees (Regions 13 and 54); U.S. Department of Transportation (DOT); and William Crocker. AAR/ASLRRA filed reply comments.

<sup>15</sup> 47 CFR § 90.421.

- Enable railroads and railroad police departments and licensed public safety entities to enter into sharing arrangements pursuant to Section 90.179 of the Commission's rules;<sup>16</sup>
- Require railroad police officer use of interoperability channels to comply with international agreements with Canada and Mexico;
- Prohibit encryption on the interoperability calling channels; and
- Decline to permit oil and gas company operations on the interoperability channels.

In sum, our decision (1) facilitates railroad police access to the interoperability channels; (2) minimizes burdens on public safety entities and railroad police; and (3) ensures consistency with public safety needs and interoperability plans.

#### A. Railroad Police Access to Interoperability Channels

5. *Background.* In the *NPRM*, we observed several benefits in establishing railroad police access to the interoperability channels. For example, we noted that 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.<sup>17</sup> We also noted that the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Recommendations Act) 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[.]”<sup>18</sup> Accordingly, we proposed to amend the Part 90 rules to enable railroad police officers to access interoperability channels.

6. Commenters support our proposal. The U.S. Department of Transportation (DOT) and Motorola Solutions endorse the Commission's efforts to amend its rules to allow railroad police officers to access interoperability channels.<sup>19</sup> NPSTC states that railroad police officers need a more expeditious, direct and simpler process to enable interoperable communications with state, county and municipal law enforcement, and potentially with fire and emergency medical service personnel and that “[t]he Commission's proposal, once adopted, should enable a significant improvement in railroad police interoperability” with these entities, especially in the event of a major incident involving the railroad.<sup>20</sup> The Association of American Railroads and the America Short Line Railroad Association (AAR/ASLRRRA) submit that “access to interoperability and mutual aid channels will ensure that railroad police can quickly and effectively communicate and coordinate with law enforcement and public safety officials on a range of matters.”<sup>21</sup>

7. Several commenters emphasize that railroad police access to the interoperability channels must be balanced against existing public safety needs and urge the Commission to ensure consistency with regional, state and local public safety interoperability operations. For example, the Association of Public Safety Communications Officials, International (APCO) generally favors promoting interoperability between railroad police and other public safety first responders, but recommends an approach that relies primarily on locally-focused sharing agreements between railroad police and public safety licensees.<sup>22</sup> Similarly, NRPC and Regions 13 and 54 submit that railroad police use of

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<sup>16</sup> 47 CFR § 90.179.

<sup>17</sup> *NPRM*, 30 FCC Rcd at 10246 para. 7.

<sup>18</sup> *Id.* citing Pub. L. No. 110-53, 121 Stat. 266, 434 § 1513 (codified at 6 U.S.C. § 1163(b)(8)).

<sup>19</sup> DOT Comments at 1; Motorola Solutions Comments at 2.

<sup>20</sup> NPSTC Comments at 1, 4-5.

<sup>21</sup> AAR/ASLRRRA Comments at 2-3

<sup>22</sup> APCO Comments at 1-2.

interoperability channels will benefit public safety users in communities where there is a need to interoperate with railroad police. They emphasize, however, that railroad police access to interoperability channels should comport with existing interoperability and regional plans.<sup>23</sup> The Illinois SIEC endorses railroad police use of interoperability frequencies, provided it accords with state and regional Statewide Communications Interoperability Plans (SCIP) and Tactical Interoperable Communications Plans (TICP).<sup>24</sup>

8. *Decision.* We agree with commenters that adoption of our proposal to give railroad police access to the interoperability channels is warranted. Train derailments can result in significant passenger injuries and loss of life as well as property damage, and can require large, multi-jurisdictional responses, including railroad police, state and local police officers, firefighters, and officials from the Federal Bureau of Investigation, the Department of Homeland Security and the National Transportation Safety Board.<sup>25</sup> Interoperability between public safety agencies and railroad police officers is also essential in training exercises for coordinated response to emergencies.<sup>26</sup> To maximize these benefits and advance Congressional objectives, we amend the rules to afford railroad police officers access to spectrum that will meet their essential interoperability needs. We also impose certain requirements to ensure that railroad police use of the interoperability channels is consistent with regional, state and local interoperability plans and the Communications Act.

#### **B. Defining Railroad Police Officers**

9. *Background.* In the *NPRM*, we sought comment on defining the term “railroad police officers” to establish the class of users eligible to access the interoperability channels.<sup>27</sup> To ensure that only appropriately commissioned railroad police officers would be allowed to access the interoperability channels during an emergency, we proposed to adopt the FRA definition of 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.<sup>28</sup>

10. We asked whether any changes to the definition of railroad police would be necessary to capture railroad police serving local and regional commuter and passenger rail transit systems (*e.g.* urban and suburban areas).<sup>29</sup> Commenters generally support our proposal to base the definition of railroad police officer on the FRA definition, *supra*, but to expand the definition. DOT, for example, submits that the Commission should make clear that Amtrak police officers and part-time railroad police officers, like

<sup>23</sup> NRPC Comments at 2; Region 13 and Region 54 Comments at 2.

<sup>24</sup> Illinois SIEC Comments at 1-2. Illinois SIEC states that the use of interoperability and mutual aid frequencies should remain limited to inter-system use only. *Id.* at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *NPRM*, 30 FCC Rcd at 10247 para. 9.

<sup>28</sup> *Id.* para. 9 *citing* 49 CFR § 207.2(a)-(c).

<sup>29</sup> *Id.* at 10248 para. 12.

other appropriately commissioned police officers, will be able to access interoperability channels.<sup>30</sup> Similarly, AAR/ASLRRA propose that if the Commission adopts the FRA definition, it should modify it to expressly include all categories of railroads.<sup>31</sup>

11. *Decision.* We adopt an expanded version, of the FRA definition of railroad police officer as follows:

- (a) Railroad police officer means a peace officer who is commissioned in his or her of legal residence or state of primary employment and employed, full or part time, 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.<sup>32</sup>
- (d) Railroad means each class of freight railroad (*i.e.* Class I, II, III); Amtrak, Alaska Railroad, commuter railroads and passenger rail transit systems.
- (e) The word state, as used herein, encompasses states, territories and the District of Columbia.

12. Our objective in expanding the FRA definition was to establish eligibility criteria applicable to a new class of users that would (1) ensure that appropriately commissioned railroad police officers will be able to access the public safety interoperability channels; and (2) encompass Amtrak police, freight railroad police, commuter railroad police, passenger rail transit system police, and part-time railroad police officers.<sup>33</sup>

### C. Licensing

13. Consistent with our objective to streamline the licensing process, we also sought comment on allowing railroads or railroad police departments to obtain licenses for use by their individual railroad police officer-employees. AAR/ASLRRA support allowing railroads and railroad police departments to obtain licenses on behalf of their employee-railroad police officers.<sup>34</sup> Similarly, the Illinois SIEC proposes that we modify Section 90.20(a)(1)(ii) of the Commission's Rules (Public Safety

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<sup>30</sup> DOT Comments at 1-2.

<sup>31</sup> As the Commission recognizes, commuter rail systems serve the transit needs of local and regional communities (e.g., urban and suburban areas), and including commuter railroad officers in the Commission's definition would facilitate coordination between those officers and other public safety entities already authorized to use interoperability and mutual aid channels. AAR/ASLRRA Comments at 5 citing NPRM at para. 12.

<sup>32</sup> *Id.* para. 9 citing 49 CFR § 207.2(a)-(c).

<sup>33</sup> *NPRM*, 30 FCC Rcd at 10247 para. 9. While the commissioning of railroad police officers is largely a state mandate, Section 1704 of the federal Crime Control Act of 1990 provides that: "A railroad police officer who is certified or commissioned as a police officer under the laws of any state shall, in accordance with the regulations issued by the Secretary of Transportation, be authorized to enforce the laws of any jurisdiction in which the rail carrier owns property." 49 U.S.C. § 28101.

<sup>34</sup> AAR/ASLRRA Comments at 6. Motorola Solutions also supports the Commission's proposal to license railroad police employers instead of individual officers. Motorola Solutions Comments at 3.

Pool Eligibility)<sup>35</sup> to read, “A governmental institution or railroad police agency authorized by law to provide its own police protection.”<sup>36</sup>

14. To implement this decision, we adopt our proposal to allow railroads and railroad police departments to obtain authorizations for their employee-railroad police officers. Commenters agree that it would be overly cumbersome to license each railroad police officer individually. Our approach will ensure effective management under common guidelines that would apply to individual officers that operate across multiple state and local jurisdictions.<sup>37</sup> Thus, we permit the railroad police department or the railroad itself to license the interoperability channels, but with the condition that the interoperability channels may be used only by railroad police officers that meet the definition we adopt herein. We decline, however, as unnecessary, the Illinois SIEC suggestion that we amend Section 90.20(a)(1)(ii) of the Commission’s rules to include railroad police agencies in the Public Safety Pool. The rules we adopt today suffice to give railroad police access to interoperability channels without making the suggested amendment.

#### **D. Need for Governmental Agency Authorization**

15. *Background.* In the *NPRM*, we sought comment on whether to require railroads or railroad police departments to obtain prior state or local governmental authorization before employee-railroad police officers may operate on interoperability channels. We noted that, unlike in the 700 MHz band, in the VHF, (including 220-222 MHz), UHF and 800 MHz bands, “we have the discretion to [license] railroad police access to interoperability channels without requiring that they obtain further authorization from a state or local governmental entity.”<sup>38</sup> With regard to the 700 MHz narrowband interoperability channels, we proposed “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 sought comment on the 700 MHz interoperability channels separate from the other bands<sup>39</sup> because the 700 MHz interoperability channels are subject to unique statutory eligibility criteria for non-governmental organizations (NGOs) under Section 337 of the Communications Act of 1934, as amended (Section 337).<sup>40</sup> We also sought 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.”<sup>41</sup>

16. Motorola Solutions supports requiring railroad police entities to include with their license applications a governmental agency authorization because it will ensure that coordination efforts between law enforcement entities and railroad police have been undertaken efficiently and in the interest of enhancing public safety operations.<sup>42</sup> AAR/ASLRRRA recommend minimizing the number of governmental authorizations necessary for railroad police to use the interoperability channels.<sup>43</sup> For the

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<sup>35</sup> 47 CFR § 90.20(a)(1)(2).

<sup>36</sup> Illinois SIEC Comments at 3.

<sup>37</sup> AAR/ASLRRRA Comments at 6.

<sup>38</sup> *NPRM*, 30 FCC Rcd at 10249 para. 14.

<sup>39</sup> *Id.*

<sup>40</sup> 47 U.S.C. § 337.

<sup>41</sup> *Id.*

<sup>42</sup> Motorola Solutions Comments at 3-4.

<sup>43</sup> AAR/ASLRRRA Reply Comments at 3, 7-8.

700 MHz interoperability channels, AAR/ASLRRA suggest that the Commission should adopt its proposal to apply the state or Regional Planning Committee (RPC) coordination and administration procedures for such applications.<sup>44</sup> Although AAR/ASLRRA urge the Commission not to require railroad police departments to obtain state or local authorizations to access the VHF, UHF and 800 MHz channels, they suggest that the Commission should find that a single state or local public safety agency authorization granted to a railroad police department encompasses authorization to use the VHF, UHF and 800 MHz bands.<sup>45</sup>

17. The Illinois SIEC suggests that railroad police departments should be treated as governmental entities, noting that under Illinois statute, railroad police officers may exercise the same police powers as any peace officer employed by a law enforcement agency.<sup>46</sup> Based on the Illinois statute and Commission rules, the Illinois SIEC suggests that, because railroad police have the same powers as any other law enforcement agency within the State, they therefore could be construed as a “governmental institution authorized by law to provide its own police protection,”<sup>47</sup> currently meeting Commission eligibility for Public Safety Pool frequencies for their official police activities.<sup>48</sup>

18. *Decision - VHF, (including 220-222 MHz), UHF, and 800 MHz Interoperability Channels.* The Commission’s rules do not expressly assign responsibility for the administration of the interoperability channels below-470 MHz.<sup>49</sup> However, the Illinois SIEC, the NRPC, Regions 13 and 54 suggest that some states (e.g., Illinois) have volunteered to foster interoperability on these channels.<sup>50</sup> Therefore, as discussed *infra*, we will afford states (e.g. the 700 MHz state interoperability administrator or designated RPC) the option of electing to administer these channels in order to ensure railroad police operations are consistent with interoperability plans.<sup>51</sup>

19. *700 MHz Narrowband Interoperability Channels.* We will require railroads and railroad police departments to obtain authorization from the state interoperability administrator for use of the 700 MHz narrowband interoperability channels.<sup>52</sup> Section 337 mandates that the 700 MHz public safety narrowband spectrum shall be made available for public safety services.<sup>53</sup> The term “public safety services” means services (1) “the sole or principal purpose of which is to protect the safety of life, health, or property;” (2) “provided by State or local government entities or nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services,” and (3) “not made commercially available to the public by the provider.”<sup>54</sup> Thus, railroads and railroad police

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<sup>44</sup> *Id.* at 7.

<sup>45</sup> *Id.* at 8.

<sup>46</sup> Illinois SIEC Comments at 2-3.

<sup>47</sup> *Id.*

<sup>48</sup> Illinois SIEC Comments at 4-5. To resolve concern that granting railroads unfettered access to Public Safety Pool frequencies could work against coordinated use of these frequencies and add congestion and interference, the Illinois SIEC urges the Commission to require railroad police agencies to coordinate with Public Safety Pool eligible entities in their areas, recognizing the existence of SCIP and TICP plans at the local, regional and state levels. Illinois SIEC Comments 4-5.

<sup>49</sup> Although the interoperability channels may be administered by state agencies or RPCs, the ultimate responsibility for using these channels in conformity with the Commission’s rules rests with the licensee.

<sup>50</sup> NRPC Comments at 7-8; Region 13 and 54 Comments at 7.

<sup>51</sup> Regardless who administers the interoperability channels, the license is ultimately responsible for ensuring that use of the channels conforms to Commission rules.

<sup>52</sup> 47 CFR § 90.525.

<sup>53</sup> 47 U.S.C. § 337(a)(1); 47 CFR § 90.523.

<sup>54</sup> 47 U.S.C. § 337(f)(1).



departments, with appropriate state or local authorization, are eligible to hold licenses for 700 MHz interoperability channels for use by employee-railroad police officers when they provide the services set forth in Section 337(f)(1).

20. Our definition of railroad police officers ensures that their use of the 700 MHz narrowband interoperability channels is to provide “public safety services,” as they will be employed “only for the protection of railroad property, personnel, passengers, and/or cargo.” We make clear in our rules that their eligibility for use of these 700 MHz channels is conditioned on this being their “sole or principal purpose” of such use.

21. Additionally, the FRA regulations require that a state official certify or otherwise designate a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state. We are persuaded that a certification from a state official that a railroad employee may act as a railroad police officer in that state supports finding that railroad police officers, as we have defined them, provide public safety services consistent with the statutory definition mandated by Section 337(f)(1).

22. To implement the requirements of Section 337 relative to NGOs, the Commission already requires that they submit a written certification of support by the state or local governmental entity that is authorizing the NGO -- 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 -- to use 700 MHz band spectrum.<sup>55</sup> Section 90.525 of the rules provides that states or state-designated entities such as RPCs, may administer the 700 MHz narrowband interoperability channels, including approving license applications prior to their being filed with the Commission.<sup>56</sup>

23. Consistent with Section 90.525 of the rules, we will require railroads and railroad police departments, on behalf of employee-railroad police officers, to obtain written authorization from the relevant state level agency responsible for administration of state emergency communications, or the relevant RPC if so delegated by the state. Relying on this existing approach reduces the number of authorizations and procedures necessary for railroad police to use the 700 MHz interoperability channels and promotes consistency with state interoperability plans.

24. Finally, railroad police officers working for governmental transit entities are eligible to operate on the 700 MHz interoperability channels, but only for provision of “public safety services,”<sup>57</sup> and then only if the entities obtain approval from the relevant state interoperability administrator or relevant RPC.

#### **E. Base and Control Station Operation and Frequency Coordination**

25. *Background.* In the *NPRM*, we noted that the NPSTC Petition did not advocate that railroad police be authorized to operate base and control stations on interoperability channels.<sup>58</sup> Nevertheless, we sought comment on whether base and control station operation by railroad police on these channels should be allowed.<sup>59</sup> If allowed, we proposed that applications for base stations would

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<sup>55</sup> 47 CFR § 90.523(b).

<sup>56</sup> 47 CFR § 90.525.

<sup>57</sup> 47 CFR § 90.523; Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands, Report and Order, 29 FCC Rcd 13283, 13299 para. 45 (2014) (reiterating that even though state and local governmental entities, including transit agencies, have access to 700 MHz narrowband spectrum as eligible licensees, uses of this spectrum must conform to the “sole or principal purpose” prong of Section 337(f)(1)(A) (i.e., the protection of safety of life, health, or property)).

<sup>58</sup> *NPRM*, 30 FCC Rcd at 10250 para. 17.

<sup>59</sup> *Id.*

have to be frequency-coordinated and, in the case of 700 MHz and 800 MHz interoperability channels, accompanied by concurrence of the relevant state interoperability administrator or RPC.<sup>60</sup>

26. Some commenters support allowing railroad police employers to operate base and control stations on interoperability channels, subject to prior frequency coordination. NPSTC contends that “[a]ny base and fixed stations allowed should be subject to frequency coordination, individually licensed and authorized in accordance with applicable State (SIEC), Regional Planning Committee (RPC) or local interoperability plans.”<sup>61</sup> The Illinois SIEC submits that “[c]ertainly fixed and control stations should require frequency coordination through the existing frequency coordination process.”<sup>62</sup> Motorola Solutions supports extending to railroad police employers the authority to obtain licenses for fixed infrastructure on the public safety interoperability channels.<sup>63</sup>

27. APCO, however, does not support base and control station operations by railroad police.<sup>64</sup> APCO asserts that a two-pronged approach for coordination and licensing “– to employ sharing agreements, or if no sponsor is available, directly license mobiles and portables – negates the need to permit railroad police to operate base and control stations.”<sup>65</sup> “By definition, if there are no public safety base stations available to share or support mobile/portable operations in a particular area, then there is no opportunity for railroad police to conduct mutual aid with other public safety agencies in the first place.”<sup>66</sup> NRPC and Regions 13 and 54 agree with APCO’s proposed approach.<sup>67</sup>

28. In reply comments, AAR/ASLRRA argue that the Commission should permit railroad police to operate base and control stations on interoperability channels, and that prohibiting such operations would unnecessarily constrain railroad police departments’ communications options.<sup>68</sup> AAR/ASLRRA argue that commenters opposed to allowing railroad police to operate base and control stations do not adequately explain why such operations should be prohibited. For example, AAR/ASLRRA argue that APCO’s opposition is based merely on the premise that adoption of shared use as the primary method of permitting railroad police to access these channels “negates the need to permit railroad police to operate base and control stations.”<sup>69</sup> AAR/ASLRRA submit that a railroad police department and state law enforcement agency may determine that it would be beneficial to deploy base and control stations in remote areas where gaps exist in radio coverage.<sup>70</sup> Thus, AAR/ASLRRA suggest that APCO’s proposal would unnecessarily restrict the options available to railroad police and state law enforcement agencies.

29. *Decision.* We adopt our proposal to permit railroads and railroad police departments to submit applications for base and control stations on interoperability channels, subject to the requirement

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<sup>60</sup> *Id.* 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.

<sup>61</sup> NPSTC Comments at 6

<sup>62</sup> Illinois SIEC comments at 5.

<sup>63</sup> Motorola Solutions Comments at 2.

<sup>64</sup> APCO Comments at 3.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> NRPC Comments at 4-7; Region 13 and 54 Comments at 3-7.

<sup>68</sup> AAR/ASLRRA Reply Comments at 6.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

that the applications must be frequency-coordinated.<sup>71</sup> We agree with the commenting parties who assert that preventing railroad police departments from using base and control stations could restrict interoperable communications options. In its comments, AAR/ASLRRA indicate that many state licensees are willing to have railroad police departments install control stations at railroad police offices in order to ensure better coordination with railroad police.<sup>72</sup> Allowing railroad police to operate base and control stations would provide railroad police and public safety agencies another option to facilitate emergency communications and, thus, advance our objective in this proceeding to eliminate gaps in interoperable communications between railroad police officers and public safety agencies during emergencies. We disagree with APCO, NRPC and Regions 13 and 14 that railroads should not be authorized to implement control and base stations. As AAR/ASLRRA point out, a railroad-operated base station could be implemented to serve uncovered areas. APCO's argument that, if there are no public safety base stations in a rural area there is no opportunity for mutual aid communications, is faulty. Thus, if there is an incident where only a railroad-operated interoperability channel base station is located, public safety first responders roaming into that area likely would communicate through that base station to their railroad police counterparts. Much the same considerations hold true for control stations that would operate in conjunction with railroad-operated base stations.

30. Before a railroad or railroad police department may submit a license application to operate a base or control station on the interoperability channels, the applicant must comply with the Commission's frequency coordination requirements. Under current Sections 90.173<sup>73</sup> and 90.175,<sup>74</sup> unless specifically exempted, each applicant for a new frequency assignment in the VHF, (including 220-220 MHz),<sup>75</sup> UHF, 700 MHz narrowband and 800 MHz bands, must include a showing of frequency coordination.<sup>76</sup> Section 90.20 identifies the four entities certified to frequency coordinate public safety

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<sup>71</sup> All licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. 47 CFR Chapter 1, Part 1, Subpart I. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. 47 CFR §§ 1.1301-1.1319. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. 47 CFR Part 1, Appendix C. The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods. Additionally, new tower construction may require notification to the Federal Aviation Administration (FAA); and Antenna Structure Registration (ASR) with the FCC. 47 CFR Part 17.

<sup>72</sup> AAR/ASLRRA Comments at 13.

<sup>73</sup> 47 CFR § 90.173(f) (“[a]pplications for stations in the 150-174 MHz, 220-222 MHz and 421-512 MHz bands for operation on frequencies 15 kHz or less removed from existing stations in the same geographic area will be granted based upon a recommendation from the applicable frequency coordinator as specified in §§90.20(c)(2) and 90.35(b)(2).”)

<sup>74</sup> 47 CFR § 90.175.

<sup>75</sup> 47 CFR § 90.175(j)(13) (applications for frequencies in the 220-222 MHz band need not be accompanied by evidence of frequency coordination except for applications for the frequencies set forth in § 90.719(c) and § 90.720, which include the mutual aid channels).

<sup>76</sup> 47 CFR § 90.175. Frequency coordinators may request, and applicants are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend the most appropriate frequency. Additionally, applicants bear

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frequencies (APCO, the International Association of Fire Chiefs (IAFC)/the International Municipal Signal Association (IMSA), the Forestry Communications Conservation Association (FCCA) and the American Association of State Highway and Transportation Official (AASHTO)).<sup>77</sup> Railroads and railroad police departments may obtain frequency coordination from any of these certified public safety frequency coordinators.

#### F. State and Regional Coordination and Administration

31. *Background.* In the *NPRM*, we noted that the Commission has previously stated that it would rely on the designated public safety frequency coordinators to jointly develop an interoperability plan for managing the nationwide use of the VHF and UHF interoperability channels.<sup>78</sup> However, in the 700 MHz band, states are responsible for the administration of the interoperability channels, and license applications for FCC authorization to use such channels must be approved by a state-level agency or organization responsible for administering state emergency communications.<sup>79</sup> States may hold the license for the interoperability channels or authorize other qualified entities to apply to the Commission for such licenses.<sup>80</sup> States may also delegate their role in the approval process for using interoperability channels to another entity such as a RPC.<sup>81</sup> The 800 MHz mutual aid channels are governed by regional plans developed by the RPCs. In the *NPRM*, we proposed to apply the state or RPC's administration procedures for the relevant spectrum band to applications filed by or on behalf of railroad police to use interoperability channels.<sup>82</sup> In the event an RPC denies a railroad police request to access the

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the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation. 47 CFR § 90.175(a).

<sup>77</sup> 47 CFR § 90.20(c).

<sup>78</sup> *NPRM*, 30 FCC Rcd at 10248 para. 15.

<sup>79</sup> See 47 CFR § 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*, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 16 FCC Rcd 2020, 2025-26 paras. 11-13 (2001) (*Fourth Report and Order and Fifth NPRM*).

<sup>80</sup> 47 CFR §§ 90.525. We note that the interoperability spectrum is distinct from the 700 MHz narrowband State License spectrum. *Id.* § 90.529.

<sup>81</sup> 47 CFR § 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*, 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. 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. 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, there 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, and Wyoming have not adopted 700 MHz regional plans as of the date hereof. South Dakota, recently submitted a Regional Plan and Hawaii designated its State Interoperability Executive Board to administer the 700 MHz interoperability channels.

<sup>82</sup> *NPRM*, 30 FCC Rcd 10248 para. 15.

interoperability channels, we proposed 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 administration of railroad police access.<sup>83</sup> We sought comment on whether any other changes to these procedures are needed to facilitate the use of interoperability channels by railroad police.<sup>84</sup>

32. Commenters generally support our proposal. NPSTC and AAR/ASLRRRA support applying the administration procedures for the relevant spectrum to railroad police use of the interoperability channels.<sup>85</sup> For frequencies in the 700 and 800 megahertz bands, NRPC, Regions 13 and 54, and the Illinois SIEC submit that railroad police operation should be consistent with plans filed by the affected RPC.<sup>86</sup>

33. *Decision. 700 MHz and 800 MHz Interoperability Channels.* We adopt our proposal to apply the existing state and RPC procedures to applications for licenses to operate on the 700 MHz and 800 MHz interoperability channels. Applying our existing procedures will ensure consistency with State, regional and local interoperability plans and avoid potential interference to existing public safety operations. Thus, we will require that license applications filed by railroad police for interoperability channels must be accompanied by a letter of concurrence from the relevant state or RPC administrator.

34. To foster efficient administration of the interoperability channels by state or RPC interoperability entities, we direct the Bureau to issue a Public Notice reminding states that they may update their previous interoperability elections. We do so because the initial state elections to administer the interoperability channels occurred close to fifteen years ago. We also observe that the U.S. Department of Homeland Security's Office of Emergency Communications supports the development of state interoperability plans as does the National Council of Statewide Interoperability Coordinators (NCSWIC). Thus, this is an opportune time for states to update previous elections. The Bureau shall issue that Public Notice within 30 days from the release of this *Report and Order*.

35. To the extent that a state or RPC cannot administer the interoperability channels, or declines to provide concurrence, railroad police may request a waiver from the Bureau to resolve issues of administration of railroad police access to the interoperability channels

36. *Below 470 MHz Interoperability Channels.* The Commission has not previously assigned the states a role in the administration of interoperability channels below 470 MHz. However, some states have adopted interoperability plans that provide guidance for the use of the VHF and UHF interoperability channels by first responders. Additionally, DHS supports the development of Statewide Communication Interoperability Plans.<sup>87</sup> In light of the existence of state and local interoperability plans for interoperability channels below 470 MHz, and considering the spectrum management benefits of consistent interoperability policies and procedures, we will amend the rules to close this gap. Specifically, we amend Section 90.20 of the Commission's rules to afford states the option of assuming responsibility for the administration of the below-470 MHz interoperability channels. Specifically, 700 MHz state interoperability entities may assume responsibility for administering the below-470 MHz interoperability channels for railroad police operations. Consistent with our approach to the 700 MHz interoperability channels, states may delegate the administration of the below-470 MHz interoperability channels to the relevant RPC(s).<sup>88</sup> Regardless of which entity assumes responsibility for administering

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> NPSTC Comments at 7; AAR/ASLRRRA Comments at 7.

<sup>86</sup> NRPC Comments at 4-7; RPC 13 and RPC 54 Comments at 3-7; Illinois SIEC Comments at 3.

<sup>87</sup> <https://www.dhs.gov/statewide-communication-interoperability-plans>.

<sup>88</sup> States should make their elections in response to the Public Notice described *supra*.

the interoperability channels, the interoperability channels may not be used by railroad police officers until an application is filed with, and granted by, the Commission.

### G. Blanket Licensing Mobile and Portable Units

37. *Background.* In the *NPRM*, we sought comment on licensing mobile and portable units for railroad police use on interoperability channels. Specifically, we proposed “blanket licensing,” in which railroad police officers would be authorized to operate on interoperability channels if their employer railroad holds a Private Land Mobile Radio (PLMR) license of any category, *e.g.*, Industrial/Business (I/B).<sup>89</sup> In so proposing, we sought to provide an efficient means to facilitate interoperability between public safety entities and railroad police officers.<sup>90</sup> The *NPRM* also inquired concerning the appropriate geographical area in which railroad police should be authorized to operate portable and mobile units on interoperability channels.<sup>91</sup> For example, should the geographic scope of the authorization be nationwide, a fixed distance from railroad rights of way, or some other defined area?<sup>92</sup>

38. Commenters disagree on whether to apply blanket licensing to railroad police mobiles and portables on interoperability channels. APCO recommends an approach that primarily relies on sharing agreements between railroad police and public safety licensees.<sup>93</sup> APCO argues that sharing arrangements are “expedient, locally-focused, and in some cases are already being put in use for railroad police.”<sup>94</sup> In the event a railroad police agency cannot find an appropriately licensed public safety sponsor for a sharing agreement, APCO recommends that railroad police follow the regular process for the frequency band in question to seek individualized mobile and portable licenses that specifically name them as licensees of these channels.<sup>95</sup> This would require coordination by a Commission-certified public safety frequency coordinator and, for the 700/800 MHz bands, the interim step of pre-coordinating with the RPC or state interoperability executive committee.<sup>96</sup> APCO submits that direct licensing of mobile and portable units is preferable to the Commission’s proposal to employ a blanket licensing approach.<sup>97</sup> According to APCO, direct licensing offers the same local focused benefit of a sharing agreements, by providing the relevant parties the opportunity to share awareness of railroad police operations, which is

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<sup>89</sup> *NPRM*, 30 FCC Rcd at 10249-50 para. 16. Under blanket licensing, any first responder employed by a public safety licensee is authorized to operate mobile or portable radios on interoperability channels (so long as such operation complies with the FCC’s technical and operational rules), thus eliminating the administrative burdens associated with submitting an application for an individual license.

<sup>90</sup> In setting aside interoperability spectrum and requiring all 700 MHz equipment to be capable of operating on the 700 MHz interoperability channels, for example, 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 para. 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.*

<sup>91</sup> *NPRM*, 30 FCC Rcd at 10250 para. 16.

<sup>92</sup> *Id.*

<sup>93</sup> APCO Comments at 2.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

important for coordination, situational awareness, conflict management, and interference mitigation if needed.<sup>98</sup>

39. NPSTC supports blanket licensing of railroad police mobile and portable units on the interoperability channels.<sup>99</sup> NPSTC states that “[w]hile railroads may be able to gain access to the interoperability and mutual aid channels through memorandum’s (sic) of understanding with all the public safety entities encompassed in the railroad’s operational area, doing so is cumbersome at best.”<sup>100</sup> According to NPSTC, major railroads operate over multiple states and tens or hundreds of counties and municipalities and that obtaining MOUs with the relevant public safety entities would require the dedication of significant resources and time, with no guarantee of success.<sup>101</sup> In addition, operating under such MOUs means that the public safety jurisdictions are ultimately responsible for railroad police communications operations implemented under the MOUs.<sup>102</sup> NPSTC asserts that railroad police officers need a more expeditious, direct and simpler process to enable interoperable communications with state, county and municipal law enforcement, and potentially with fire and emergency medical service personnel.<sup>103</sup> NPSTC therefore supports blanket licensing limited, however, to mobile and portable units.<sup>104</sup>

40. Motorola Solutions also supports the blanket licensing approach discussed in the NPRM.<sup>105</sup> In addition, Motorola Solutions submits that the geographic scope of the blanket licensing authorization should be sufficiently broad to support the operational needs of railroad police, whose public safety efforts often span many U.S. jurisdictions and expand beyond the railroad tracks.<sup>106</sup>

41. In reply comments, AAR/ASLRRRA urge the Commission to allow railroad police departments to be licensed nationwide to “enable a significant improvement in railroad police interoperability with other law enforcement” and public safety officials. AAR/ASLRRRA agree with NPSTC that obtaining MOUs would be burdensome and time consuming with no guarantee of success, and argues that expedient and locally-focused sharing arrangements do not mean that sharing arrangements are preferable as a general matter. Noting that railroads often operate across multiple jurisdictions, AAR/ASLRRRA contend that the “locally-focused” nature of sharing arrangements may impede railroad police departments’ ability to efficiently and effectively coordinate and communicate with other officials to address public safety incidents, threats, or concerns.<sup>107</sup>

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<sup>98</sup> *Id.* at 2-3.

<sup>99</sup> *Id.*

<sup>100</sup> NPSTC Comments at 4.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 5. NPSTC generally supports the Commission’s proposal to apply the coordination and administration procedures for the relevant spectrum to railroad police use of the interoperability and mutual aid channels. NPSTC urges the Commission to ensure that whatever coordination procedures are required do not unnecessarily complicate authorization for railroad police use of the interoperability channels. For example, to the extent railroad police use of mobiles and portables on the VHF, UHF and 800 MHz band interoperability channels is authorized by a blanket license, it is unclear whether the normal need for coordination is applicable. Any coordination approach needs to be simplified to be workable. *Id.* at 7.

<sup>105</sup> Motorola Solutions Comments at 3.

<sup>106</sup> *Id.*

<sup>107</sup> AAR/ASLRRRA Reply Comments at 5-6.

42. *Decision. Blanket Licensing.* We adopt our proposal to apply blanket licensing to mobile and portable units used by railroad police officers on the condition that railroad and railroad police department employers (a) obtain or hold a PLMR license of any category; and (b) obtain authorization from the statewide interoperability coordinator in each state in which they operate.<sup>108</sup> With regard to condition (a), we note that Section 301 of the Communications Act of 1934, as amended, prohibits radio communication on PLMR frequencies without a license, hence our requirement that the railroad have, or obtain, some category of PLMR license is not burdensome because the nature of railroad operations means that a railroad or the railroad police department likely have a PLMR license in order to conduct communications for other aspects of their business.<sup>109</sup> Condition (b) may be satisfied by the employer railroad entering into an MOU with the applicable state interoperability coordinator, which would authorize railroad police to operate mobiles and portables on the interoperability channels statewide. This approach balances the benefits of a streamlined licensing approach for railroad police mobiles and portables against the concern that railroad police access could undermine coordinated use of the interoperability channels during an emergency.<sup>110</sup>

43. Although we do not require that railroad police employers enter into sharing agreements with public safety licensees in order for their railroad police employees to operate mobile and portable units on the interoperability channels, we do not preclude such agreements pursuant to Section 90.179.<sup>111</sup> Such sharing agreements are cost efficient and make efficient use of spectrum.

44. *Mobile-Only License.* In the *NPRM*, we sought comment on an alternative approach of issuing “mobile only” licenses to railroad police employers, *e.g.*, to accommodate such employers in the unlikely event that their employers do not hold a PLMR license.<sup>112</sup> 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.<sup>113</sup> AAR/ASLRRRA support issuing mobile-only licenses to railroad police employers in addition to blanket licensing<sup>114</sup> whereas APCO supports mobile-only licenses as an alternative to blanket licensing. We decline APCO’s suggestion that blanket licensing not be permitted and only mobile-only licensing be allowed, *inter alia*, because it is too limiting – first responders need the ability to communicate through base stations, when available, something prohibited to mobile-only licensees.<sup>115</sup> However, in the unlikely circumstance in which a railroad lacks any category of PLMR license, a mobile-only authorization may be the only alternative. In light of our decision to permit blanket licensing for railroad police employers and to provide them another licensing option, we adopt this proposal subject to our frequency coordination rules and state and regional administration of interoperability channels.

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<sup>108</sup> The Commission has authorized blanket licensing in other contexts. *See, e.g.*, 47 CFR §§ 25.135(c-d), 25.136(b-c), 25.138(f)(blanket licensing of satellite telephones and other portable transceivers); 47 CFR § 5.75 (blanket experimental licenses); 47 CFR § 25.222 (blanket licensing provisions for earth stations on vessels); 47 CFR § 80.54 (Automated Maritime Telecommunications System licensees have blanket authority for a system of coast stations and mobile units).

<sup>109</sup> 47 U.S.C. § 301.

<sup>110</sup> *See supra* n.108.

<sup>111</sup> 47 CFR § 90.179.

<sup>112</sup> *NPRM*, 30 FCC Rcd at 10250 para. 16. See references to mobile-only authorizations at 47 CFR §§ 90.465, 90.237, 90.205, 90.267, 90.20(65), 90.35(d)(4).

<sup>113</sup> *Chevron USA, Inc. and Sprint Nextel*, Memorandum Opinion and Order, WT Docket No. 02-55, 21 FCC Rcd 11313, 11314 n.10 (PSHSB 2006)(*Chevron*).

<sup>114</sup> AAR/ASLRRRA Comments at 8-10.

<sup>115</sup> *Chevron*, 21 FCC Rcd at 11313, 11314 n.10 (PSHSB 2006).



## H. Operation of Mobile Units Not Under the Control of the Licensee.

45. *Background.* The *NPRM* sought comment on whether the interoperability goals of this proceeding could also be accomplished through existing rules as an alternative to our main proposal.<sup>116</sup> For example, we noted that Section 90.421 of the Commission's rules<sup>117</sup> permits operation of mobile stations by persons not holding a public safety license, subject to the conditions set forth in that Section.<sup>118</sup> In comments, AAR/ASLRRA and Motorola Solutions suggest that the Commission revise Section 90.421 to clarify that railroad police officers are eligible users of existing public safety communications systems – not necessarily limited to interoperability channels – when authorized by a current licensee.

46. *Decision.* In light of our decision permitting railroad police operations on the interoperability channels, we conclude that it is sufficient to clarify that public safety entities may also communicate with railroad police pursuant to (and subject to the limitations of) Section 90.421. We do not believe that such a rule amendment is necessary to achieve the result urged by AAR/ASLRRA and Motorola Solutions, so long as the railroad police communications with the licensee are limited to emergencies “that require cooperation and coordination with the licensee”<sup>119</sup> and otherwise meet the conditions of the rule.

## I. International Coordination

47. *Background.* In the *NPRM*, we noted that operations on interoperability channels along our international borders are subject to agreements with Canada and Mexico.<sup>120</sup> We sought comment on how to address international coordination issues if we adopt our proposal to authorize railroad police use of U.S. interoperability channels.<sup>121</sup> AAR/ASLRRA state that railroads operate near and routinely cross U.S. international borders, and railroad police must therefore be able to communicate with their counterparts in Canada and Mexico to the same extent as any other public safety entity in order to effectively respond to incidents, threats, or concerns.<sup>122</sup>

48. *Decision.* We agree with AAR/ASLRRA that when railroad incidents occur in the vicinity of the U.S./Canada or U.S./Mexico border, it would be beneficial for first responders from both countries to be able to coordinate their response and avoid any miscommunication. Therefore, in light of our decision to authorize railroad police use of U.S. interoperability channels, we also allow railroad police to use the interoperability channels to communicate along and across the border with counterpart first responders in Canada and Mexico to the same extent as an eligible U.S. public safety entity, consistent, however, with international agreements or existing rules applicable to the relevant spectrum band.

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<sup>116</sup> *NPRM*, 30 FCC Rcd at 10251-52 paras. 21-23.

<sup>117</sup> 47 CFR § 90.421.

<sup>118</sup> *Id.* citing 47 CFR §90.421. 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.” 47 CFR § 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 CFR § 90.421(a)(2).

<sup>119</sup> 47 CFR § 90.421(a)(1).

<sup>120</sup> *NPRM*, 30 FCC Rcd at 10250 para. 18.

<sup>121</sup> *Id.* para. 19.

<sup>122</sup> For example, Canadian National Railway, an AAR member, operates a rail tunnel that carries significant traffic between Sarnia, Ontario and Port Huron, Michigan.

49. With regard to these international agreements, our agreement with Canada permits cross-border communications by mobile and portable units on public safety interoperability channels in the 700 MHz and 800 MHz bands.<sup>123</sup> Our agreement with Mexico permits cross-border use of 800 MHz interoperability channels, but does not extend to 700 MHz channels.<sup>124</sup> 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 users on both sides of the border are properly licensed.<sup>125</sup>

#### **J. Encryption and Nationwide Interoperability Channels**

50. *Background.* In the *NPRM*, we sought 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. The calling channels are generally reserved for interoperability calling and may not be used for routine, day-to-day communications. For example, the calling channels enable first responders approaching an emergency to identify themselves to local emergency responders already at the scene and to switch to another channel as directed. We also sought comment on amending the rules to list the nationwide interoperability channels. No commenter addressed these proposals.

51. *Decision.* Sections 90.553 and 90.531 of the Commission's rules<sup>126</sup> prohibit the use of encryption on the 700 MHz narrowband interoperability calling channels. We now extend that prohibition to the interoperability calling channels in the VHF, UHF and 800 MHz bands. Absent the restriction, first responders from different jurisdictions would be unable to make their presence known on the calling channels unless they employed a common encryption algorithm and had the appropriate encryption key. Encryption may be useful on tactical interoperability channels,<sup>127</sup> so long as a common encryption method is employed and the appropriate encryption keys are distributed to all authorized users.<sup>128</sup> Accordingly, encryption used under those conditions on the tactical interoperability channels will continue to be permitted. To simplify our rules and to further promote interoperability among Federal, state, local, tribal

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<sup>123</sup> 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 para. 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 MHz, and 851-869 MHz by the Land Mobile Service Along the Canada -United States Border at para. 3.2.3 (August 1, 2011) (Arrangement F). See also, Statement of Intent of the Federal Communications Commission of the United States of America and the Department of Industry of Canada Related to the Cross-Border Operation of Portable Radios by Public Safety Agencies Along the United States-Canada Border, October 12, 2014.

<sup>124</sup> 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, para. 2 (June 8, 2012) (Mexico Protocol).

<sup>125</sup> 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.

<sup>126</sup> 47 CFR §§ 90.553, 90.531.

<sup>127</sup> Tactical channels are all interoperability channels other than the calling channels.

<sup>128</sup> 47 CFR § 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.")

public safety entities and railroad police, we amend the rules to (1) list the nationwide interoperability channels in Section 90.20(i) of the Commission's rules<sup>129</sup> and (2) make explicit that encryption may not be used on any of the interoperability calling channels.

#### **K. Oil and Gas Companies**

52. *Background.* In comments, the American Petroleum Institute (API) recommended that the Commission extend its railroad police proposal to oil and gas companies and other critical infrastructure industry (CII) entities, *i.e.*, grant oil and gas companies access to the public safety interoperability channels for safety related communications if their employer holds a PLMR license in any radio category, including Industrial/Business (I/B).<sup>130</sup> API claims these entities have a need for public safety interoperability and proposes that authority to operate on interoperability channels be given to CII personnel who are certified by a state or local government for emergency medical or fire response or require access to the interoperability channels for safety purposes or to satisfy legal requirements.

53. *Decision.* API's proposal is outside the scope of this proceeding, which is focused on railroad police eligibility to access the interoperability channels, and thus will not be further addressed here.

### **III. PROCEDURAL MATTERS**

#### **A. Final Regulatory Flexibility Analysis**

54. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>131</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Report and Order*. The FRFA is set forth in Appendix A.

#### **B. Paperwork Reduction Analysis**

55. This *Report and Order* contains new or modified information collection requirements. Specifically, the Commission adopts rule changes that expand eligibility for interoperability 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).<sup>132</sup>

#### **C. Congressional Review Act**

56. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>133</sup>

### **IV. ORDERING CLAUSES**

57. 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 *Report and Order* is hereby ADOPTED.

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<sup>129</sup> 47 CFR § 90.20(i).

<sup>130</sup> API Comments at 5-7.

<sup>131</sup> See 5 U.S.C. § 604. 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, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

<sup>132</sup> 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 CFR § 1320.5(g) (previously 1302.11(h)).

<sup>133</sup> See 5 U.S.C. § 801(a)(1)(A).

58. IT IS FURTHER ORDERED that part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as specified in Appendix B, effective 30 days after publication in the *Federal Register*, except that those amendments which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

59. IT IS FURTHER ORDERED that the Final Regulatory Flexibility Analysis in Appendix A IS ADOPTED.

60. IT IS FURTHER ORDERED that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission SHALL SEND a copy of this *Report and Order* to Congress and to the Government Accountability Office.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> the Commission prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules adopted in this *Report and Order*. The Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Report and Order* and FRFA (or summaries thereof) will be published in the *Federal Register*.<sup>3</sup>

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

2. The *Report and Order* amends the Part 90 rules to facilitate railroad police access to public safety interoperability channels. Specifically, in response to a Petition for Rulemaking filed by the National Public Safety Telecommunications Council (NPSTC), the Commission issued a *Notice of Proposed Rulemaking* seeking comment on expanding eligibility to allow railroad police officers as defined by Federal Railroad Administration (FRA) to operate on public safety interoperability channels in the VHF, (including 220-222 MHz), UHF, 700 MHz narrowband and 800 MHz bands. Commenters were supportive of the NPRM proposals. Therefore, in light of the record, the *Report and Order* amends the Part 90 eligibility and licensing rules applicable to public safety interoperability spectrum.

3. As discussed in Sections D and E of this IRFA, the Commission has endeavored to keep the burdens associated with these rule changes as simple and minimal as possible. The *Report and Order* requires employers of railroad police officers to obtain authorization to operate on the 700 MHz interoperability channels as required by Section 90.523 and Section 90.525 of the Commission's rules and Section 337(f)(1) of the Communications Act of 1934, as amended. Further, the *Report and Order*, requires employers of railroad police officers seeking to license the interoperability channels to obtain frequency coordination and submit a license application in order to operate base and control stations on interoperability channels. Additionally, the *Report and Order* adopts several alternatives to licensing fixed infrastructure on the interoperability channels in order to minimize the burden on railroad police and provide flexibility in achieving interoperability with public safety, as discussed in Section E of the FRFA. Finally, we update Section 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.

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

4. 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.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> "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

<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

townships.<sup>6</sup> For this category, census data for 2012 show that there were approximately 37,132 counties, cities and towns that have populations of fewer than 50,000.<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup> Below, we describe and estimate the number of small entities that may be affected by the rules changes adopted in this *Report and Order*.

5. *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 persons<sup>10</sup> For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.<sup>11</sup> Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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<sup>6</sup> [http://www2.census.gov/govs/cog/g12\\_org.pdf](http://www2.census.gov/govs/cog/g12_org.pdf).

<sup>7</sup> <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).

<sup>8</sup> 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.*

<sup>9</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>10</sup> See 13 CFR § 121.201, NAICS code 517210.

<sup>11</sup> 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).

<sup>12</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table). 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.”

<sup>13</sup> See [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ2&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table)

<sup>14</sup> See generally 13 CFR § 121.201.

6. *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 (NPSAC band). In total there are 6,092 public safety entities, including small governmental jurisdictions, licensed to operate on at least one of the interoperability channels.

7. *Class I, Class II, and Class III Railroads.* The *Report and Order* expands eligibility to operate on the interoperability channels to include railroad police employed by a Class I, II, or III railroad, Amtrak, the Alaska Railroad and passenger transit lines as defined by the STB. 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.<sup>15</sup> 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.”<sup>16</sup> This threshold is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.<sup>17</sup> 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.

8. The *Report and Order* expands eligibility to permit railroad police officers as defined by the FRA 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 *Report and Order* provides 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**

9. 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 *Report and Order* provides that railroad police officers who are certified and/or commissioned as a police officer under the

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<sup>15</sup> 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.

<sup>16</sup> See 68 Fed. Reg. 24891 (May 9, 2003).

<sup>17</sup> See 49 CFR Part 1201.

laws of any state, in accordance with the regulations issued by the Secretary of the U.S. Department of Transportation and recognized by the Federal Railroad Administration (FRA) should be eligible to operate on the nationwide interoperability channels.

10. The *Report and Order* requires employers of railroad police officers to obtain governmental authorization to operate on the 700 MHz interoperability channels as required by Sections 90.523 and Section 90.525 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. We do not change the wording of the OMB-approved collection in any material or substantive manner. Only the number of respondents would change as we would expect that employers of 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 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.

11. The *Report and Order* permits the licensing of base and control stations on the interoperability channels. The licensing of base and controls stations would require frequency coordination (e.g., employers of railroad police 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 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 make any substantive or material changes to the wording of the existing information collection. Instead, we amend the Part 90 eligibility rules to allow employers of railroad police officers to license the interoperability channels, thus increasing the number of respondents subject to the existing information collections by approximately 763 entities.

12. Additionally, 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 make any substantive or material changes to the wording of this existing information collection but we allow railroad police to operate on these interoperability channels, thus increasing the number of respondents subject to the existing information collections by approximately 763 entities.

13. The *Report and Order* adopts less burdensome alternatives to licensing, constructing and operating base stations and control stations on the interoperability channels. Specifically, the *Report and Order* allows railroad police officers to (1) operate mobile and portable stations on these channels under a "blanket" licensing approach; (2) allows public safety licensees to share their facilities with railroad police pursuant to a sharing agreement under Section 90.179 of the Commission's Rules; and (3) permits railroad police officers to operate mobile stations under public safety licensee's authorization pursuant to Section 90.421, 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 make 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. Thus, the number of respondents would increase by approximately 763 entities.

14. 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 adopts benefit public safety and railroad police entities by giving them more flexibility, and more options for gaining access to interoperability spectrum.

15. However, in the interest of ensuring railroad police coordinate with state and local public safety entities, we will require railroad police to obtain concurrence from the relevant state or state-designated interoperability coordinator before operating mobiles or portables on the VHF, (including 220-222 MHz), UHF, 700 MHz narrowband and 800 MHz interoperability channels. Employers of railroad police officers shall execute a memorandum of understanding with state interoperability coordinator. Similarly, we will require employers of railroad police officers seeking to license the below-470 MHz interoperability channels to obtain concurrence from the relevant state interoperability coordinator. To facilitate interoperability coordination in the bands below 470 MHz, we will provide states the option of administering the below-470 MHz interoperability channels. States may delegate the administration of the below-470 MHz interoperability channels to the existing 700 MHz and 800 MHz Regional Planning Committees.

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.<sup>18</sup> We have evaluated our rule changes in this *Report and Order* 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, the rules adopted in this *Report and Order* are deregulatory in nature and consistent with Federal railroad interoperability mandates. Accordingly, the rule changes minimize any significant economic impact on small entities.

18. The *Report and Order* provides railroad police four alternatives that will minimize the impact on small entities, including small railroads. First, the *Report and Order* permits “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 and subject to coordination with the relevant state interoperability coordinator. Second, *Report and Order* permits issuing mobile-only licenses that would allow railroad police officers to operate mobiles on the interoperability channels without having to construct and operate base and control stations. Third, the *Report and Order* clarifies that Section 90.421 of the Commission’s rules allows railroad police officers to operate mobiles under the license of public safety licensees. Fourth, the *Report and Order* clarifies that

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<sup>18</sup> 5 U.S.C. § 603(c)(1)-(4).

Section 90.179 of the Commission's rules permits public safety entities to "share" their facilities with railroad police. No significant alternative was presented in the comments.

19. Finally, the *Report and Order* amends Section 90.20 of the Commission's rules to explicitly identify the nationwide interoperability channels *i.e.* the VHF (including 220-222 MHz), UHF and 700 MHz narrowband, and on the 800 MHz interoperability 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 provide railroad police officers and public safety a flexible licensing approach to facilitate interoperability.

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

20. None.

**APPENDIX B**  
**Final Rules**

Chapter 1 of Title 47 of the Code of Federal Regulations is 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).

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

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(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) provided their employer holds a Private Land Mobile Radio (PLMR) license of any radio category, including Industrial/Business (I/B). Eligible users include full and part time railroad police officers, Amtrak employees who qualify as railroad police officers under this subsection, Alaska Railroad employees who qualify as railroad police officers under this subsection, freight railroad employees who qualify as railroad police officers under this subsection, and passenger transit lines police officers 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 on behalf of railroad police officers in their employ. Employers of railroad police officers must obtain concurrence from the relevant state interoperability coordinator or regional planning committee before applying for a license to the Federal Communications Commission or operating on the interoperability and mutual aid channels.

(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, full or part time, 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.

(d) Railroad means each class of freight railroad (*i.e.* Class I, II, III); Amtrak, Alaska Railroad, commuter railroads and passenger transit lines.

(e) The word state, as used herein, encompasses states, territories and the District of Columbia.

Eligibility for licensing on the 700 MHz narrowband interoperability channels is restricted to entities that have as their sole or principal purpose the provision of public safety services.

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(i) Nationwide Interoperability Channels. The nationwide interoperability and mutual aid channels are listed below for the VHF, (including 220-222 MHz), UHF, 700 MHz and 800 MHz bands. (See §§ 90.20(d)(80), 90.531(b)(1), 90.617(a)(1) and 90.720). Any Part 90 public safety eligible entity holding a Part 90 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: Encryption may not be used on any of the interoperability or mutual aid calling channels.

<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

<u>700 MHz Interoperability Channel (MHz)</u>	<u>Purpose</u>
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) 800.49375 MHz (mobile)	Tactical
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

<u>700 MHz Interoperability Channel (MHz)</u>	<u>Purpose</u>
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 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 the District of Columbia 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**

American Petroleum Institute  
Association of American Railroads and American Short Line and Regional Railroad Association  
Association of Public Safety Communications Officials International, Inc.  
Heather Plummer  
Illinois State Interoperability Executive Committee  
Motorola Solutions, Inc.  
National Public Safety Telecommunications Council  
National Regional Planning Council  
Regional Planning Committees 13 and 54 (Illinois)  
U.S. Department of Transportation  
William Crocker

**II. REPLY COMMENTS**

Association of American Railroads/ American Short Line and Regional Railroad Association

**III. *EX PARTE* FILINGS**

None