

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

In the Matter of)
)
ILLINOIS COOPERATIVE ASSOCIATION,)
INC. d/b/a Clear Talk)
)
Request for Waiver of 47 C.F.R. § 90.603(b))

ORDER

Adopted: January 16, 2001

Released: January 18, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order*, we consider a request for waiver of Sections 90.179 and/or 90.603(b) of the Commission’s Rules¹ submitted by Illinois Cooperative Association, Inc. d/b/a Clear Talk (IL Coop) on January 21, 2000. IL Coop seeks authorization to share its communications system, which uses Business, Industrial/Land Transportation (I/LT) and Specialized Mobile Radio (SMR) frequencies, with entities that are not eligible for certain of the frequencies utilized in IL Coop’s system. For the reasons stated below, we grant IL Coop’s waiver request in part and deny in part. Specifically, we grant the request to permit Public Safety eligibles to share Business and I/LT channels, but deny the request to permit other non-I/LT eligibles to share I/LT channels.

II. BACKGROUND

2. The 800 MHz band is divided into five service categories – Business, General Category, I/LT, Public Safety and SMR – with each category having specific eligibility criteria.² As a general matter, entities are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.603 of the Commission’s Rules establishes the framework by which an entity may provide communications services to other parties on a not-for-profit, cost-shared basis.³ Section 90.179 of the Commission’s Rules provides that licensees of radio stations may share the use of their facilities under certain conditions.⁴ The rules in effect when IL Coop filed its waiver request limited shared use of radio

¹ 47 C.F.R. §§ 90.179, 90.603(b).

² *See* 47 C.F.R. §§ 90.615, 90.617.

³ 47 C.F.R. § 90.603(b).

⁴ 47 C.F.R. § 90.179.

stations to persons who would be eligible for authorization for the subject frequencies.⁵

3. IL Coop was formed by four electric cooperatives serving nineteen counties in rural Illinois.⁶ It is currently licensed to use one hundred twenty-one 800 MHz band channels at thirty-eight sites.⁷ The four electric cooperatives use this combined communications system for dispatching crews, meter reading and communicating with one another during emergency situations.⁸ Integration of their separate, outmoded systems into a single, state-of-the-art network resulted in excess capacity.⁹ Currently, IL Coop shares its excess capacity with Public Safety, I/LT and Business eligibles on a non-profit, cost-shared basis, pursuant to a grant of special temporary authority.¹⁰

4. IL Coop seeks a rule waiver to enable it to share its Business and I/LT channels with Public Safety eligibles, and its I/LT channels with non-I/LT Business eligibles.¹¹ It argues that a waiver is warranted because of the rural nature of the area, and the small size of businesses and public safety entities that it serves.¹² Specifically, it notes that the sparse population of the region means that work often requires traveling substantial distances, and that communications options are limited.¹³ In addition, IL Coop contends that small entities, particularly small government entities, cannot afford to construct their own modern communications networks.¹⁴ The waivers sought by IL Coop would enable it to use spectrum interchangeably among its users without regard to the end user's eligibility. IL Coop states that it needs this flexibility in order to provide all of its users access to the entire system because some sites utilize only Business or I/LT channels.¹⁵

⁵ 47 C.F.R. § 90.179(a). The Commission recently amended Section 90.179 to allow Public Safety and Federal Government entities to share Industrial/Business frequencies. 1998 Biennial Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rulemaking*, PR Docket No. 92-235, 15 FCC Rcd 16673, 16684 ¶ 21 (2000). The new rule took effect on November 13, 2000. *See* 65 Fed. Reg. 60869 (2000).

⁶ Illinois Cooperative Association Waiver Request at 1-3 (filed Jan. 21, 2000) (Waiver Request).

⁷ *Id.* at 4. Of these channels, 45 are Business, 27 are I/LT and the remainder are SMR. *Id.* at 4-5.

⁸ *Id.* at 2.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6-8, 12 n.24.

¹¹ With respect to its frequencies that have been allocated for SMR use, IL Coop is correct that it may allow any entity use of such frequencies without a waiver. *Id.* at 5 n.6. Because these channels have not been converted to Business channels, the licensee may offer communications services to any entity.

¹² *Id.* at 16-22.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

III. DISCUSSION

5. Section 1.925 of the Commission's Rules permits a rule waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest.¹⁶ Alternatively, an applicant's request for waiver may also be granted if, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to public interest, or the applicant has no reasonable alternative.¹⁷ We conclude that IL Coop has demonstrated that it is a not-for-profit entity. We also find that IL Coop has shown that a waiver of Section 90.179 is warranted to permit it to share its I/LT and Business frequencies with Public Safety eligibles. However, we are not persuaded that non-I/LT Business eligibles should be allowed to use I/LT frequencies. Our basis for these determinations is set forth below.

6. *Public Safety Eligibles Sharing Business and I/LT Frequencies.* On July 12, 2000, the Commission decided to expand shared use by allowing I/LT licensees to share use of their frequencies with Public Safety entities and Federal Government entities.¹⁸ This rule change took effect on November 13, 2000.¹⁹ Therefore, IL Coop is now permitted to share its Business and I/LT frequencies with Public Safety entities.

7. *Non-I/LT Business Eligibles Sharing I/LT Frequencies.* With respect to its proposal to share its I/LT frequencies with Business eligibles, however, we find that IL Coop has failed to justify a waiver. In its waiver request, IL Coop proffers a considerable factual and legal basis for permitting Public Safety entities to share its system.²⁰ However, IL Coop does not provide the same rulemaking and case law support to substantiate its claim that Business eligibles face unique circumstances that justify a waiver. Indeed, IL Coop acknowledges that we have denied previous requests to permit non-I/LT eligibles to share I/LT frequencies.²¹ Moreover, we find unpersuasive the only factual basis IL Coop suggests for permitting such sharing: that Business eligibles in rural Illinois share a similar need – one for low-cost, high quality dispatch service - with Public Safety entities.²² First, although IL Coop states that Business frequencies are

¹⁶ 47 C.F.R. § 1.925(a)(3)(i).

¹⁷ 47 C.F.R. § 1.925(a)(3)(ii).

¹⁸ See 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 15 FCC Rcd 16673, 16684 ¶ 21 (2000) (determining that Industrial/Business licensees would be allowed to share its frequencies with public safety and Federal Government entities).

¹⁹ 65 Fed. Red. 60869 (2000).

²⁰ Waiver Request at 16-22.

²¹ See Waiver Request at 22 (citing East River Electric Power Cooperative, *Order*, 13 FCC Rcd 5871 (WTB 1997); Viking Dispatch Services, Inc., *Order*, 11 FCC Rcd 6685 (WTB 1996), *aff.d.*, *Memorandum Opinion and Order*, 14 FCC Rcd 18814 (1999)). IL Coop attempts to distinguish its waiver request from other waiver requests that have been denied by revisiting the requirements of Section 90.179 of the Commission's rules. See *id.* We conclude, however, that satisfying the not-for-profit, cost-shared requirements of Section 90.179 of the Commission's rules alone does not justify a waiver of other requirements in that rule.

²² *Id.* at 19.

difficult to obtain in rural Illinois,²³ none of the parties IL Coop proposes to serve have substantiated IL Coop's claim. Further, unlike Public Safety entities, the record does not reflect a unique circumstance whereby the Business eligibles IL Coop seeks to serve, such as farmers, plumbers, electricians and light construction companies, would need interoperability with other users.²⁴ Additionally, IL Coop does not claim that cooperative sharing²⁵ or multiple licensing²⁶ is unavailable as an alternative for the Business eligibles. In addition, we note that other services are available for these entities to satisfy their internal communications needs, including the Multi-Use Radio Service,²⁷ General Mobile Radio Service,²⁸ Family Radio Service,²⁹ and Citizens Band Radio Service.³⁰ That some of these alternatives may require some additional expense on the part of these private business entities alone is not sufficient grounds for a rule waiver.³¹

IV. CONCLUSION

8. This *Order* grants in part the request of IL Coop for a waiver of Sections 90.179 and/or 90.603 of the Commission's Rules. Specifically, we grant IL Coop's request for waiver to permit it to share its I/LT and Business frequencies with Public Safety eligibles on a not-for-profit, cost-shared basis. However, we do not permit IL Coop to share its I/LT frequencies with Business eligibles or non-Federal government entities that are not Public Safety eligibles. The action taken herein serves the public interest in that it will encourage more efficient use of spectrum and provide improved opportunities for interoperable communications by the public safety and public service community.

V. ORDERING CLAUSES

9. IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 90.179 and 90.603(b) of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.179, 90.603(b), the Waiver Request filed by Illinois Cooperative Association on January 21, 2000 is GRANTED IN PART and DENIED IN PART, as set forth above.

²³ *Id.* at 5.

²⁴ *But compare id.* at 5, 7 (demonstrating the need for interoperability among Public Safety users).

²⁵ *See* 47 C.F.R. § 90.179.

²⁶ *See* 47 C.F.R. § 90.185.

²⁷ *See* C.F.R. Part 90 Subpart J.

²⁸ *See* C.F.R. Part 95 Subpart A.

²⁹ *See* C.F.R. Part 95 Subpart B.

³⁰ *See* C.F.R. Part 95 Subpart D.

³¹ *See, e.g.,* Pacific Microwave Joint Venture, *Order*, 15 FCC Rcd 11704, 11706 ¶ 7 (WTB PSPWD 2000); Country Cousins, Inc., *Order*, 14 FCC Rcd 19351, 19353 ¶ 6 (WTB PSPWD 1999); *see also* Optel, Inc., *Order*, 14 FCC Rcd 3762, 3767 ¶ 12 (WTB 1999).

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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