

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

In the Matter of Application of	)	
	)	
CENTRAL MAINE POWER COMPANY	)	FCC File No. 0000660096
	)	
For Private Land Mobile Radio Station And	)	
Request for Waiver of Inter-Category Sharing	)	
Freeze in the 806-821/851-866 MHz Bands and	)	
Section 90.617 of the Commission's Rules	)	

**ORDER**

**Adopted: February 20, 2003**

**Released: February 25, 2003**

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

1. *Introduction.* In this *Order*, we address the above-captioned application and request for waiver (Request) of Central Maine Power Company (CMPC) to use certain Public Safety Category channels.<sup>1</sup> In this connection, CMPC seeks waiver of the inter-category sharing freeze<sup>2</sup> and Section 90.617 of the Commission's Rules.<sup>3</sup> For the reasons set forth below, we grant the Request.

2. *Background.* Private Land Mobile Radio (PLMR) frequencies in the 806-821/851-866 MHz bands (the "800 MHz band") are divided into the following "categories" or "pools:" (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) Business, (d) Industrial/Land Transportation (I/LT) and (e) General.<sup>4</sup> As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.621(e) of the Commission's Rules, however, permits "inter-category sharing" whereby applicants that are eligible for licensing in the 800 MHz Public Safety, Industrial/Land Transportation or Business Categories can be licensed on channels outside of their respective categories if certain criteria are met, *inter alia*, no channels are available in the category for which the applicant is eligible.<sup>5</sup>

3. On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing of all PLMR frequencies in the 800 MHz band.<sup>6</sup>

<sup>1</sup> FCC File No. 0000660096, Exhibit 1—Request for Waiver of the Inter-Category Sharing Freeze (Request).

<sup>2</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB) (*Inter-Category Sharing Order*), *aff'd on recon.*, 11 FCC Rcd 1452 (WTB 1995).

<sup>3</sup> 47 C.F.R. § 90.617.

<sup>4</sup> See 47 C.F.R. §§ 90.615, 90.617. It should be noted, however, that although they are regulated under Part 90 of the Commission Rules, SMR and General Category frequencies generally are now used to provide commercial mobile radio services, rather than PLMRS.

<sup>5</sup> See 47 C.F.R. § 90.621(e)(1).

<sup>6</sup> See *Inter-Category Sharing Order*, note 2 *supra*.

The Bureau determined that the inter-category sharing freeze was warranted to ensure the successful resolution of the spectrum allocation issues raised in PR Docket No. 93-144, and that the future radio spectrum needs of the public safety community would not be compromised.<sup>7</sup>

4. On November 15, 2001, CMPC filed the above-captioned application to utilize PLMR channels in the 806-821/851-866 MHz bands that are allotted to the Public Safety Category. Subsequently, CMPC amended its application on several occasions, most recently on January 8, 2003.<sup>8</sup> CMPC is not a Public Safety Category eligible; in this connection, it requests waiver of the Commission's Rules, *i.e.*, Section 90.617(a), and the *Inter-Category Sharing Order*.

5. *Discussion.* A waiver may be granted where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup>

6. CMPC, a major utility company that provides wholesale and retail electricity to 540,000 business and residential customers throughout the southern half of Maine, states that it needs the channels requested herein for dispatch communications with field crews that maintain and restore electric service.<sup>10</sup> According to CMPC, it is essential that these radio communications remain reliable and secure, especially during emergencies when public safety is affected.<sup>11</sup> In this connection, CMPC reports that commercial radio services are unreliable, insecure or are completely unavailable in the predominantly rural part of CMPC's service area.<sup>12</sup> CMPC further explains that no I/LT or Business Category channels are available in the service area proposed herein.<sup>13</sup> CMPC avers that it is requesting three Public Safety Category channel pairs under unique circumstances and no reasonable alternatives for its proposed operation of an

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<sup>7</sup> *Id.*, 10 FCC Rcd at 7352 ¶¶ 5-7.

<sup>8</sup> On January 16, 2002, the Licensing and Technical Analysis Branch (Branch) returned the application because it did not include a request for waiver of the inter-category sharing freeze. Automated Letter, Ref. No. 1241936 (Jan. 16, 2002). On March 11, 2002, CMPC filed the Request with an amended application, which the Branch returned because it requested an incorrect radio service and did not establish that Business and I/LT (B&I/LT) channels were unavailable. Automated Letter, Ref. No. 1331518 (Mar. 13, 2002). On March 18, 2002, CMPC filed an amended application, which the Branch returned because the additional information provided did not establish that B&I/LT channels were unavailable. Automated Letter, Ref. No. 1342870 (Mar. 20, 2002). On March 25, 2002, CMPC re-filed the application stating that the Association of Public Safety Communications Officials (APCO) consented to the use of 855/810.2375 and 855/810.7125 MHz – two of the three requested channel pairs. On January 7, 2003, the Branch contacted UTC Spectrum Services seeking clarification. In response, on January 7, 2003, CMPC filed an amended application with a correct radio service along with evidence of APCO's consent for two of the three channel pairs requested, and evidence that B&I/LT channels were unavailable. The Branch contacted the frequency coordinator and APCO's letter consenting to all three of the channel pairs requested in the above-captioned application was filed on January 8, 2003.

<sup>9</sup> 47 C.F.R. § 1.925(b)(3)(i), (ii).

<sup>10</sup> *See* Request at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* FCC File No. 0000660096, Letter dated Jan. 7, 2003, from Dave Haller, 800/900 MHz Frequency Coordinator, United Telecommunications Council (UTC) Spectrum Services, to FCC, at 1.

advanced 800 MHz system that would provide secure, reliable radio communications to be used to support the safe and efficient delivery and restoration of electrical service to the public.<sup>14</sup>

7. Additionally, CMPC contends that granting the Request will not frustrate the underlying purpose of the inter-category sharing freeze<sup>15</sup> because most of the issues raised in PR Docket No. 93-144 have been resolved.<sup>16</sup> Furthermore, CMPC states that the proposed operation would not adversely impact existing public safety operations or future spectrum needs.<sup>17</sup> In this connection, CMPC notes that APCO has consented to the operations proposed in the above-captioned application.<sup>18</sup> CMPC also notes that the Commission has recognized that utilities use spectrum to provide public safety radio services, even though such entities are not eligible for public safety spectrum *per se*,<sup>19</sup> and that promoting interoperability between traditional public safety organizations and utilities serves the public interest.<sup>20</sup>

8. We have reviewed our licensing database and found no co-channel public safety licensees within 113 kilometers of CMPC's proposed location.<sup>21</sup> We also note that APCO, an FCC-certified frequency coordinator for 800 MHz Public Safety Category frequencies, consents to the proposed use of requested frequencies. The record also reflects that CMPC has no reasonable alternative for its proposed operation of an advanced 800 MHz system that would provide secure, reliable radio communications to be used to support the safe and efficient delivery and restoration of electrical service to the public. In this instance, therefore, we conclude that granting the Request would have no adverse impact on public safety systems, and that grant of the requested waiver would not undermine the underlying purposes of the inter-category sharing freeze.<sup>22</sup> We also believe that granting a waiver under these circumstances is consistent with precedent.<sup>23</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *See* Request at 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See* FCC File No. 0000660096, Letter dated Jan. 7, 2003, from APCO-AFC Dept., to FCC, at 1. APCO is a Commission-certified frequency coordinator for Public Safety Category channels. *See also* 47 C.F.R. § 90.621(e)(5), which requires frequency coordination from the applicable out-of-category coordinator.

<sup>19</sup> *Id.* at 1-2 *citing* In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of The American Mobile Telecommunications Association, *First Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22711 (2000).

<sup>20</sup> Request at 2.

<sup>21</sup> *See* 47 C.F.R. § 90.621(b)(4).

<sup>22</sup> *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, 12 FCC Rcd 9972, 10004-5 ¶ 103 (1997) ("This freeze was intended to stem the increase in inter-category applications for Public Safety channels by I/LT and Business licenses whose own channels were subject to increased demand from SMR applicants.").

<sup>23</sup> *See, e.g.,* Fisher Ranch, *Order*, 17 FCC Rcd 602, 603 (WTB PSPWD 2002) (granted waiver of inter-category freeze to permit I/LT assignee to operate on a public safety channel at new site 32 miles from site granted to I/LT assignor prior to freeze – because the I/LT use of the public safety channel would have no adverse impact on public safety systems).

9. Accordingly, 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 and 90.617 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.617, the Request for Waiver filed by Central Maine Power Company IS GRANTED and application FCC File No. 0000660096 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau