

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

In the Matter of )  
 )  
DOMINION VIRGINIA POWER )  
 )  
Request for Waiver of Section 90.20 )  
of the Commission’s Rules )

ORDER

Adopted: June 30, 2004

Released: July 2, 2004

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

I. Introduction

1. On October 6, 2003, Dominion Virginia Power (Dominion) filed a Request for Waiver of Section 90.20 of the Commission’s Rules<sup>1</sup> to permit it to be eligible to utilize frequencies allotted to the Public Safety Services Pool.<sup>2</sup> Later, on March 10, 2004, Dominion amended its Waiver Request to include an additional base station and reduce the proposed transmitting power.<sup>3</sup> The Waiver Request was placed on public notice on March 26, 2004.<sup>4</sup> Based on the record in this proceeding, we conclude that the waiver request should be granted. Specifically, we grant the request to waive the eligibility requirements of Section 90.20 which will allow Dominion to operate base stations on the frequency 39.54 MHz. We find it significant that as a direct consequence of our decision Dominion will be able to use the Public Safety Service Pool frequency to communicate directly with public safety officials during emergencies. As a result, we believe this action fosters interoperability and promotes effective public safety and emergency communications.

II. Background

2. Dominion states that it serves more than two million homes and businesses in Virginia and North Carolina.<sup>5</sup> According to Dominion, it operates two nuclear facilities in Virginia, North Anna in Louisa County and Hogg’s Neck in Surry County. Dominion requests waiver of the eligibility requirements contained in Section 90.20 of the Commission’s Rules so that it may

<sup>1</sup> 47 C.F.R. § 90.20.

<sup>2</sup> Dominion’s Request for Waiver of Section 90.20, (filed Oct. 6, 2003), *see* ULS File No. 0001382080.

<sup>3</sup> Dominion’s Amendment to its Waiver request (filed Mar. 10, 2004), *see* ULS File No. 0001382080. In this item, we refer to Dominion’s original waiver request and its amended requests collectively as “Dominion’s Waiver Request.”

<sup>4</sup> Wireless Telecommunications Bureau Seeks Comment on the Dominion Virginia Power’s Request for Waiver to Use A Public Safety Frequency in the 30-50 MHz Band to Support Interoperability Communications With Public Safety Entities, *Public Notice*, DA 04-779 (WTB PSCID rel. Mar. 26, 2004).

<sup>5</sup> *See* Dominion’s Waiver Request.

operate base stations on 39.54 MHz, allowing Dominion's security officials at these plants to better coordinate with public safety entities in the event of an emergency.<sup>6</sup>

3. As a general matter, under the Commission's Part 90 Rules, entities are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.20 of the Commission's Rules sets out the eligibility requirements for use of frequencies in the Public Safety Services Pool.<sup>7</sup> In general, those requirements restrict use of the frequencies listed in that section to governmental entities and persons or associations that have a direct role in providing emergency or medical services.<sup>8</sup> A waiver of Section 90.20 of the Commission's Rules is, therefore, necessary to permit Dominion to operate base stations on the frequency 39.54 MHz.

4. The Commonwealth of Virginia, Department of State Police (State Police) has submitted a letter in support of Dominion's request.<sup>9</sup> The subject frequency has been designated by Virginia as its State-wide Interdepartmental Radio System (SIRS), and is to be used only for "transmissions of a direct law enforcement nature."<sup>10</sup> While the State of Florida supports the goal of the waiver petition, namely, interoperable communications between Dominion and public safety in Virginia, it nonetheless argues that it can be accomplished through use of Section 90.179, "Shared Use of Radio Spectrum," and therefore, it urges the Commission to deny the waiver.<sup>11</sup>

### III. Discussion

5. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the grant would be in the public interest and the underlying purpose of the rule would be frustrated or not served by the application to the present case;<sup>12</sup> or that in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup>

6. We find that Dominion has shown that grant of a waiver of Section 90.20 under the circumstances presented, is in the public interest and warranted to permit it to operate base stations on 39.54 MHz at its nuclear facilities. As Dominion states in its filing, it will use the proposed frequencies at two of its nuclear power plants to provide critical infrastructure communications. Such communications will allow for increased coordination between Dominion's security officers and the responding public safety personnel, by providing Dominion

---

<sup>6</sup> *Id.*

<sup>7</sup> 47 C.F.R. § 90.20.

<sup>8</sup> *See* 47 CFR §§ 90.15; 90.20.

<sup>9</sup> *See* Letter from John Furlough, Communications Officer, Commonwealth of Virginia, Department of State Police to Scot Stone, Federal Communications Commission, received Mar. 8, 2004 (VA State Police Letter).

<sup>10</sup> VA State Police Letter.

<sup>11</sup> *See* Florida Comments at 1.

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii) (formerly 47 C.F.R. § 90.151(a)).

with a radio system that allows it to communicate directly with the Virginia public safety community. The Commission has previously noted the importance of facilitating such communications when granting similar requests.<sup>14</sup>

7. Further, we are persuaded by the letter of support for this waiver issued by the State Police. As noted above, the State Police explains that the frequency requested by Dominion is currently designated as the frequency for SIRS. As such, the use of this frequency is restricted to coordination of law enforcement activities with local agencies.<sup>15</sup> As the State Police recognizes, there are benefits to be derived from having a means of direct communication between the nuclear plant security officials and responding law enforcement officers in the event of an emergency or breach of security. For these reasons, we conclude that Dominion's waiver request does not frustrate the underlying purpose of the subject rule that spectrum designated for use by public safety entities be limited to such entities. Rather, based on the record before us, we believe that the proposed operation actually enhances and furthers the Commission's goal of promoting interoperability and effective public safety and emergency communication by allowing more coordination between public safety officers and Dominion. Specifically, we believe that grant of the requested relief will result in realization of a stated goal in the Commission's Strategic Plan.<sup>16</sup> As such, we find it is in the public interest to grant Dominion's waiver request.

8. Finally, Dominion has demonstrated that there are no reasonable alternatives within the existing rules to accommodate the described needs. As the letter from the State Police indicates, the SIRS, which is a dedicated state-wide public safety system is available only on this frequency.<sup>17</sup> Further, Dominion indicates that alternative communications are not feasible given the need for long-range mobile communications that are reliable and secure, particularly given the sensitive nature of the nuclear facilities it operates. Therefore, to deny Dominion access to this frequency would appear to frustrate their ability to engage in direct communication with the public safety entities in Virginia in the event of an emergency.

9. Further, Section 90.179, contrary to Florida's contention, does not provide these entities an opportunity to share facilities.<sup>18</sup> Under that rule, "persons may share a radio station only on frequencies for which they would be eligible for a separate authorization."<sup>19</sup> As Dominion has shown, it would not be eligible for a license on the 39.54 MHz frequency because

---

<sup>14</sup> See American Electric Power Service Corporation Request for Waiver of Section 90.179 of the Commission's Rules, *Order*, 15 FCC Rcd 15553 (2000); Commonwealth of Pennsylvania and GPU Energy request for Waiver of Section 90.179 of the Commission's Rules, *Order*, 13 FCC Rcd 8787 (1997).

<sup>15</sup> VA State Police Letter at 1.

<sup>16</sup> See Federal Communications Commission, Strategic Plan FY 2003-FY 2008, available at <<http://www.fcc.gov/omd/strategicplan/strategicplan2003-2008.pdf>> (*Strategic Plan*). One of the Commission's stated goals in the *Strategic Plan* is to promote homeland security by promoting effective communications services by and between public safety, public health, and other emergency and defense personnel in emergency situations.

<sup>17</sup> See VA State Police Letter.

<sup>18</sup> See Florida comments at 2.

<sup>19</sup> See 47 CFR 90.179(a).

it fails to meet the eligibility requirements contained in Section 90.20(a).<sup>20</sup> Therefore, finding no reasonable alternative, we conclude that granting Dominion's waiver request is warranted.

#### IV. Conclusion

10. For the reasons stated herein, we find that Dominion has met the burden for grant of waiver of Section 90.20 of the Commission's Rules. This *Order* grants Dominion's request for waiver to allow it to hold authorization in the 39.54 MHz frequency, designated for use by entities eligible for the Public Safety Pool. The action taken herein serves the public interest in that it will provide improved opportunities for interoperable communications by the public safety and public service community where no reasonable alternative exists.

#### V. Ordering Clauses

11. 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 90.20 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.20, the Waiver Request filed by Dominion on October 6, 2003 and amended on March 10, 2004, IS GRANTED as set forth above.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>20</sup> See 47 CFR 90.20(a).