

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

In the Matter of	)	
	)	
Ameren Services Company, Request for Waiver of	)	FCC File No. 0001739681
Intercategory Sharing Freeze in the 806-821/851-	)	
866 MHz Bands and Section 90.617 of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: June 2, 2006**

**Released: June 5, 2006**

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

1. *Introduction.* On May 17, 2004, Ameren Services Company (Ameren) filed a Request for Waiver of Section 90.617<sup>1</sup> of the Commission's Rules, and of the freeze on inter-category sharing,<sup>2</sup> to permit it to use 800 MHz Public Safety frequencies as part of a Trunked Industrial/Land Transportation (I/LT) system.<sup>3</sup> Specifically, Ameren seeks a waiver to permit use of public safety category frequencies at several sites in rural areas of eastern Missouri and southern Illinois.<sup>4</sup> For the reasons discussed below, we grant the request for waiver and permit the processing of Ameren's application.

2. *Background.* As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria.<sup>5</sup> Section 90.621(e) of the Commission's Rules permits "inter-category sharing" whereby applicants that are eligible for licensing in the 800 MHz Public Safety and Business/Industrial Land Transportation categories may be licensed on channels outside of their respective categories if certain criteria are met.<sup>6</sup> An applicant may be licensed on channels outside of the category for which they are eligible, if there are no channels available in that category.<sup>7</sup> Ameren has provided a letter from the Industrial Telecommunications Association (ITA) (now Enterprise Wireless Alliance) which stated that it "has no frequencies to recommend in either the Industrial Land or Business Pool for the proposed areas of this application."<sup>8</sup>

3. On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing (inter-category sharing freeze) of all private land

<sup>1</sup> 47 C.F.R. § 90.617 (providing a listing of 800 MHz frequencies, including Public Safety frequencies).

<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 1995) *recon. denied. Memorandum Opinion and Order*, 11 FCC Rcd 1452 (WTB 1995).

<sup>3</sup> See FCC File No. 0001739681 (filed May 17, 2004, amended June 21, 2004 and Nov. 15, 2004) and accompanying Waiver Request (Waiver Request).

<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 90.617.

<sup>6</sup> 47 C.F.R. § 90.621(e)(5).

<sup>7</sup> The Commission's Rules require that the frequency coordinator certify that frequencies are not available in the applicant's own category, and that the selected frequencies are coordinated by an applicable out-of-category coordinator. *Id.*

<sup>8</sup> See FCC File No. 0001739681 and accompanying ITA Attachment.

mobile radio service frequencies in the 806-821/851-866 MHz bands.<sup>9</sup> The Bureau determined that the inter-category sharing freeze was warranted to curb the increase in inter-category applications for Public Safety channels by I/LT and Business licensees whose own channels were subject to increased demand from Specialized Mobile Radio applicants and to maintain a stable spectrum environment until the geographic licensing issues raised in PR Docket 93-144 had been resolved.<sup>10</sup> Accordingly, a waiver of the inter-category sharing freeze is necessary to permit the processing of Ameren's application.

4. On July 8, 2004, the Commission adopted a plan to reconfigure the 800 MHz band.<sup>11</sup> The Commission divided the 800 MHz band into a non-cellular band and a cellular band.<sup>12</sup> As part of the Commission's solution to the problem of 800 MHz interference to public safety communications, the Commission ordered 800 MHz incumbent licensees operating on former channels 1-120 (806-809/851-854 MHz) to vacate their spectrum to create "green space" for relocating National Public Safety Planning Advisory Committee (NPSPAC) licensees operating at 821-824/866-869 MHz which has been redesignated as part of the cellular band.<sup>13</sup> Of particular relevance to the instant waiver request, the frequencies sought by Ameren are located in the interleaved portion of the non-cellular band, (*i.e.* frequencies above 809/854 MHz and below 817/862 MHz).

5. *Discussion.* We may grant a waiver of a Commission rule (a) when the underlying purpose of the rule would not be served by application to the instant case and a grant of the waiver is in the public interest, or (b) when in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> Ameren contends that granting its waiver request will not frustrate the underlying purpose of the inter-category sharing freeze because the majority of issues raised in PR Docket No. 93-144 have been resolved. Moreover, Ameren states, the proposed operation would not adversely impact existing public safety operations or future spectrum needs. In this connection, Ameren submits the concurrence from the Association of Public Safety Communications Officials-International, Inc. a certified 800 MHz public safety coordinator.<sup>15</sup> We also observe that the requested frequencies are located in the interleaved portion of the non-cellular band, and thus would be consistent with band reconfiguration. In this instance, therefore, we conclude that granting the Waiver Request would have no adverse impact on band reconfiguration and that grant of the requested waiver would not undermine the underlying purposes of the inter-category sharing freeze.<sup>16</sup>

6. We also believe that granting a waiver under these circumstances would serve the public interest. Ameren is a major utility company that, along with its parent and related affiliates, provides wholesale and retail electricity to approximately 30,000 customers in the area to be served by the

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<sup>9</sup> See note 2, *supra*.

<sup>10</sup> *Id.*

<sup>11</sup> See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order*, 19 FCC Rcd 14969, as amended by *Erratum*, DA 04-3208, 19 FCC Rcd 19651, and *Erratum*, DA 04-3459, 19 FCC Rcd 21818 (2004) (*800 MHz R&O*).

<sup>12</sup> See *800 MHz R&O*, 19 FCC Rcd 14977 ¶ 11.

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

<sup>14</sup> See 47 C.F.R. § 1.925.

<sup>15</sup> See FCC File No. 0001739681, Letter from Wendy Caruthers, Technical Director, APCO International, Inc., to Julia R. Biggs, ITA (dated June 11, 2004).

<sup>16</sup> See, *e.g.*, Central Maine Power Company, *Order*, 18 FCC Rcd 2581 (WTB PSPWD 2003); 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).

proposed Martsen, Missouri site.<sup>17</sup> Ameren adds that the requested site at Joppa, Illinois, will provide communications affecting approximately 1 million Ameren business and residential customers in Southern Illinois and Eastern Missouri served by the power transmission lines from the Joppa power generating station.<sup>18</sup> The requested site at Cape Girardeau, Missouri, will provide communications affecting 23,000 Ameren business and residential customers in parts of the City and County of Cape Girardeau.<sup>19</sup> Ameren submits that the requested channels are needed for dispatch communications with field crews that maintain and restore electric service.<sup>20</sup> Ameren states that it is essential that these radio communications remain reliable and secure, especially during emergencies when the public safety may be affected.<sup>21</sup> Ameren contends that there are no reasonable alternatives 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.<sup>22</sup> According to Ameren, commercial radio services are unreliable, insecure or are completely unavailable in the proposed locations, which are primarily rural.<sup>23</sup> Under these circumstances, we believe that grant of the requested waiver will serve the public interest.

7. *Ordering Clauses.* 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 Ameren Services Company IS GRANTED and application FCC File No. 0001739681 filed on May 17, 2004, amended June 21, 2004 and amended on November 15, 2004, SHALL BE PROCESSED consistent with this *Order*. 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

Michael J. Wilhelm  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>17</sup> See Waiver Request at 1. Ameren states that approximately 18,000 of these are direct retail customers of Ameren, while approximately 12,000 are served by the City of Sikeston, Missouri, through a wholesale power supply agreement. *Id.*

<sup>18</sup> *Id.*

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*