

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

In the Matter of)
)
DOUGLAS ELECTRIC COOPERATIVE)
)
Request for Waiver of Section 90.179 of the)
Commission's Rules)

ORDER

Adopted: October 5, 2006

Released: October 6, 2006

By the Deputy Bureau Chief, Chief of Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On August 8, 2006, Douglas Electric Cooperative (DEC), a non-profit electric cooperative utility, filed a Request for Waiver¹ of Section 90.179 of the Commission's Rules² to permit it to share a county-wide trunked 450-470 MHz band (UHF) communication system licensed to the County of Douglas, Oregon (Douglas).³ Based on the information provided, we conclude that DEC's request should be granted.

II. BACKGROUND

2. Section 90.179 of the Commission's Rules allows licensees of radio stations to share the use of their facilities with others under certain conditions.⁴ One of the conditions states that entities may share a radio station (*i.e.*, operate under another entity's license) but only if that station is licensed on frequencies for which the sharing party would be eligible for a separate authorization.⁵ In this case, Douglas is licensed for public safety frequencies. DEC is not eligible to use public safety spectrum.⁶ Therefore, a waiver of the rules is required to permit DEC to share (use) the Douglas UHF communication system.

3. DEC argues that good cause exists for a waiver. In this regard, DEC notes that Douglas County, where it provides electrical service to a major portion of the County population, is a large rural

¹ DEC Request for Waiver of § 90.179 (Waiver Request).

² 47 C.F.R. § 90.179.

³ The Douglas UHF communication system is authorized under the following call signs: WQEJ270, WQDW473, WQDS763, WQDV744, WQDS765, WQEB749, WQEB748, WQDS764, WQEI939 and WQF397.

⁴ A station is shared when entities not licensed for the station control the station for their own purposes pursuant to the licensee's authorization.

⁵ See 47 C.F.R. § 90.179(a).

⁶ The rules containing the eligibility requirements for use of frequencies in the Public Safety Pool are contained in 47 C.F.R. § 90.20. In general, those requirements restrict use of public safety frequencies to governmental entities and persons or associations that have a direct role in providing emergency or medical services.

area marked by mountains and rugged terrain and is heavily timbered. According to DEC, parts of the County are significantly impacted by weather conditions, especially during the winter months with snow, ice, high winds and storms coming off the Pacific Ocean that often interrupt electrical service.⁷ DEC contends that in repairing outages caused by bad weather it is critical that it be able to communicate with its maintenance crews in the field. Further, DEC states that in repairing outages DEC must frequently coordinate its operations with public safety personnel. Allowing it to share the Douglas radio system will provide DEC the ability to communicate with its crews and give DEC critical interoperability communications capability with public safety personnel needed.

4. DEC states that Douglas has agreed to share its UHF communication system. Further, DEC provides letters from the Douglas County Sheriff's Office and the State of Oregon's Office of Homeland Security supporting the sharing request.⁸ DEC also points out that the Douglas communication system parallels in large part the electrical system it operates. It argues that it would not be in the public interest in general, or in the interest of DEC's customers,⁹ to require DEC to expand its communication system to cover the same area as the Douglas system, especially when Douglas is willing to share its system.¹⁰

III. DISCUSSION

5. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (1) 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; or (2) 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.¹¹

6. We find that granting DEC a waiver of Section 90.179 to allow it to use the Douglas system on a non-profit basis serves the public interest. Permitting sharing in this case will allow for better overall communications between DEC headquarters facilities and its utility maintenance crews in the field, thereby enhancing crew safety and facilitating prompt repair of its power delivery system, which is important to the residents of Douglas County. Further, the sharing will allow DEC personnel to communicate directly with public safety entities in emergency situations. The Commission previously has noted the importance of facilitating such communications when addressing similar requests.¹² In addition, promoting interoperability and effective public safety/public service communications is consistent with Commission goals to promote Public Safety and Homeland Security.¹³ Finally, we are persuaded by the support for the waiver from Douglas, the Sheriff's Office and the State of Oregon's Office of Homeland Security.

⁷ Waiver Request at 2.

⁸ See Attachments to Waiver Request.

⁹ According to DEC, it must necessarily be sensitive to the rates it can charge its customer base, a customer base which is overwhelmingly residential. See Waiver Request at 3.

¹⁰ Waiver Request at 3.

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² See Entergy Nuclear Indian Point 2, LLC, Request for Waiver of Section 90.179(a) of the Commission's Rules, File No. 0001242437, *Order*, 19 FCC Rcd 21256 (Chief, PSCID, WTB 2004) and Dominion Virginia Power, Request for Waiver of Section 90.20 of the Commission's Rules, *Order*, 19 FCC Rcd 12254 (Chief, PSCID, WTB 2004).

¹³ See Federal Communications Commission, Strategic Plan 2006-2011, at 15-16, available at www.fcc.gov/omd/strategicplan.

7. We also find that granting the waiver request will not frustrate the underlying purpose of § 90.179(a), which is to ensure adequate spectrum for each service category (*i.e.*, public safety and business/industrial), and to avoid interference to communications from incompatible services. Because it operates a trunked system, Douglas has exclusive use of these frequencies. Further, because the shared system operates in a rural environment, it is highly unlikely that the proposed shared use could result in a shortage of public safety spectrum. On the contrary, in this case, we believe sharing will result in more efficient use of the spectrum overall.

IV. CONCLUSION

8. For the reasons stated herein, we find DEC has met the burden for grant of a waiver of Section 90.179 of the Commission's Rules. This *Order* grants DEC's request for waiver to allow it to use Douglas' UHF communication system on a non-profit basis subject to DEC and Douglas entering into a sharing agreement.

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 and 90.179 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.179, the Waiver Request filed by DEC on August 8, 2006, IS GRANTED as set forth above.

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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