

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

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC.)	FCC File No. 0001969467
)	
Request for Waiver of 900 MHz Application)	
Filing Freeze)	

ORDER

Adopted: December 11, 2006

Released: December 11, 2006

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a request for waiver filed by Dominion Nuclear Connecticut, Inc. (Dominion) on December 13, 2004, and supplemented on March 21, 2006.¹ Dominion seeks a waiver of the freeze on the filing of applications for new 900 MHz licenses.² For the reasons stated below, we grant the request for waiver and will process Dominion's application.

2. *Background.* On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze³ on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process⁴ designed to resolve interference to public safety communications. The Bureau stated that it would continue to accept applications for license modification, and would entertain requests for waiver of the 900 MHz application freeze.⁵ Subsequently, the Commission released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.⁶

3. On December 13, 2004, Dominion filed the above-captioned application for authorization to operate a new 900 MHz station at its Millstone Power Station (Millstone) in Waterford, Connecticut, and requested a waiver of the 900 MHz freeze. On January 28, 2006, the application was returned to

¹ See FCC File No. 0001969467 (filed Dec. 13, 2004, amended Jan. 26, 2005, Feb. 3, 2005, and Mar. 21, 2006), Waiver Request (filed Dec. 13, 2004) (Waiver Request), Support Letter to Waiver (filed Mar. 21, 2006) (Waiver Supplement).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to provide for Flexible Use of the 896-901 and 935-940 MHz bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

⁴ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15127-28 ¶¶ 335-337 (2004).

⁵ See *900 MHz Freeze PN*, 19 FCC Rcd at 18278 n.7.

⁶ See *900 MHz NPRM*, 20 FCC Rcd at 3857 ¶ 67.

allow Dominion to provide additional information in support of its waiver request.⁷ Dominion supplemented its waiver request on March 31, 2006.

4. In its waiver request, as supplemented, Dominion states that the facility for which it seeks authorization is needed in order to comply with new homeland security requirements imposed by the U.S. Nuclear Regulatory Commission (NRC).⁸ Dominion indicates that it formerly used a 450 MHz communications system, but stopped using it because it created electromagnetic interference and radio frequency interference that caused plant equipment to malfunction.⁹ Dominion indicates that an interference study concluded that use of frequencies in the entire 450 MHz band and lower frequencies—not merely the specific 450 MHz frequencies used at Millstone—can cause interference to Millstone plant equipment.¹⁰ Further, after discussions with various vendors, Dominion reports that the only commercially available radios that will satisfy its requirements operate in the 900 MHz band.¹¹

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² 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.¹³ We conclude that Dominion's request for waiver should be granted under the second prong of the waiver standard.

6. Specifically, the NRC homeland security requirement is a unique or unusual circumstance. In addition, as explained above, the record before us indicates that Dominion has no reasonable alternative to the 900 MHz band. Moreover, we find it is in the public interest to grant a waiver in this instance as it will both enhance nuclear power plant security, and avoid potentially dangerous electromagnetic and radio frequency interference that could cause an equipment malfunction or other problem at the plant.

⁷ See FCC Return Letter 3907048 (Jan. 28, 2006).

⁸ See Waiver Request at 1; Waiver Supplement at 1 (citing Nuclear Regulatory Commission Orders EA-02-026 (Feb. 25, 2002), EA-03-086 (Apr. 29, 2003)).

⁹ See Waiver Request at 1 (citing Nuclear Regulatory Commission, Use of Portable Radio Transmitters in Nuclear Power Plants, Information Notice 83-83 (Dec. 19, 1983) (apprising nuclear power reactor facilities of reported instances in which portable radio transmissions in the 450-460 MHz band caused system malfunctions and spurious actuations in nuclear power plants)).

¹⁰ See Waiver Supplement at 1.

¹¹ *Id.* at 2.

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

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 Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver filed by Dominion Nuclear Connecticut, Inc. on December 13, 2004 and supplemented on March 21, 2006 IS GRANTED, and application FCC File No. 0001969467 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

8. 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

Scot Stone
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