

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

In the Matter of)
)
AMEREN SERVICES COMPANY) File No. 0003832139
)
Request for Waiver)

ORDER

Adopted: August 30, 2010

Released: August 31, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned application and request for waiver to operate a Business/Industrial/Land Transportation (B/ILT) communications system using certain 806-821/851-866 MHz (800 MHz) band Public Safety Pool frequency pairs in the vicinity of Wildwood, Missouri, filed by Ameren Services Company (Ameren).¹ For the reasons stated below, we grant the waiver request.

2. *Background.* Ameren is a utility company that provides electricity to approximately 100,000 customers in the area to be served by the requested site.² It states that there are no B/ILT channels available in the proposed service area, and that it needs the frequencies for dispatch communications with field crews that maintain and restore electrical service in that area.³ Ameren requests frequency pairs 854/809.9625 MHz, 858/813.9625 MHz, and 859/814.9625 MHz “because they have been historically assigned to Ford Motor Company [(Ford)] in the Saint Louis metropolitan area ... prior to the license being terminated on May 5, 2009, [and] thus the approval of this request will not impact Public Safety operations in the area.”⁴ Ameren, which already operates on other 800 MHz band frequencies in the

¹ See File No. 0003832139 (filed May 8, 2009), Request for Inter-Service Frequency Coordination (Waiver Request).

² See Waiver Request at 1.

³ *Id.* Ameren contends that “it is essential that these communications remain reliable and secure, especially during emergencies when the safety of the general public may be affected,” and that “commercial radio services are unreliable, insecure, or are completely unavailable in the coverage area of the proposed location.” *Id.*

⁴ Waiver Request at 1. Ford’s license for Station WPIR939 was terminated pursuant to Section 90.157 of the Commission’s Rules, 47 C.F.R. § 90.157, due to permanent discontinuance of operations after it closed its Hazelwood, Missouri automotive assembly plant. See Ford Communications Inc., *Order*, 24 FCC Rcd 5304 (WTB MD 2009).

area,⁵ needs a waiver of Section 90.617(b) of the Commission's Rules because the requested frequencies are designated for Public Safety use.⁶

3. In support of its waiver request, Ameren submitted a letter from the Association of Public-Safety Officials-International, Inc. (APCO), one of the frequency coordinators for the 800 MHz Public Safety Pool, approving Ameren's proposed use of the frequencies.⁷ No party opposed Ameren's request in response to a public notice seeking comments on the request.⁸

4. *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 grant of the 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.⁹ We conclude that Ameren has demonstrated that its request should be granted under the first prong of the waiver standard.

5. First, we conclude that the underlying purpose of the rule – providing adequate 800 MHz band spectrum for public safety use – would not be served by denying the request. As noted above, the requested frequencies were licensed for B/ILT use until recently, and likely were not part of any planned Public Safety operations. In addition, given APCO's concurrence and the Commission's actions in the 800 MHz rebanding proceeding making additional 800 MHz band spectrum available for Public Safety use, we conclude that grant of Ameren's request will not materially diminish the inventory of 800 MHz Public Safety spectrum in the area.¹⁰

⁵ See Call Signs WNQJ842, WNVL476, WPIQ944.

⁶ See 47 C.F.R. § 90.617(b) Table 1. Ford was licensed on the channels pursuant to “inter-category sharing.” The Commission previously permitted intercategory sharing where applicants eligible for licensing in one category obtain licenses on channels outside of their respective categories if certain criteria are met, including that no channels are available in the category for which the applicant is eligible. However, the Wireless Telecommunications Bureau placed a freeze on the filing of new applications for intercategory sharing on all 800 MHz private land mobile radio frequencies to curb the increase in such applications for Public Safety Category channels by B/ILT licensees whose own channels were subject to increased demand from Specialized Mobile Radio applicants. See, e.g., FM Radio Service, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 1883, 1883-84 ¶ 2 (WTB 2010).

⁷ Letter dated May 8, 2009, from Michelle Fink, Processing Manager, APCO International, to Julia Biggs, Spectrum Manager, Enterprise Wireless Alliance.

⁸ See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver Filed by Ameren Services Company to Use 806-821/851-866 MHz Band Public Safety Pool Frequencies for an Industrial/Land Transportation Communications System, *Public Notice*, 24 FCC Rcd 14731 (WTB MD 2009). The only commenters were Ameren and its frequency coordinator, the Enterprise Wireless Alliance.

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ These factors obviate our ordinary reluctance to authorize B/ILT use of Public Safety channels other than in an arrangement that facilitates interoperability, see *Northeast Utilities Service Company, Order*, 22 FCC Rcd 18652, 18653-54 ¶ 5 (WTB MD 2007).

6. In addition, we conclude that grant of Ameren's request would be in the public interest. We previously have found it to be in the public interest to grant waivers to enable electric utilities to operate critical infrastructure and help meet public safety needs.¹¹

7. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.925 of the Communication's Rules, 47 C.F.R. § 1.925, the request for waiver by Ameren Services Company dated May 8, 2009 and filed in connection with application FCC File No. 0003832139 IS GRANTED, and application FCC File No. 0003832139 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

8. This action is taken under delegated authority granted pursuant to Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹¹ See, e.g., Pacificorp, *Order*, 24 FCC Rcd 5796, 5799 ¶ 7 (WTB MD 2009) (citing PacifiCorp, *Order*, 21 FCC Rcd 7762, 7764 ¶ 5 (WTB PSCID 2006)); Ameren Services Company, *Order*, 21 FCC Rcd 6329, 6330-31 ¶ 6 (WTB PSCID 2006).