

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

In the Matters of
STATE OF MICHIGAN and DETROIT EDISON
Request for Waiver of Section 90.179(a) of the
Commission's Rules;
STATE OF MICHIGAN and
ITC TRANSMISSION
Request for Waiver of Section 90.179(a) of the
Commission's Rules

ORDER

Adopted: January 10, 2012

Released: January 10, 2012

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

I. INTRODUCTION

1. The State of Michigan (Michigan) and Detroit Edison (DE) seek a waiver of Section 90.179(a) of the Commission's rules to permit Michigan to share use of the Michigan Public Safety Communications System (MPSCS), its statewide 800 MHz radio network, with DE during emergencies and for other limited purposes. In addition, Michigan and ITC Transmission (ITC) request a waiver of Section 90.179(a) to permit Michigan to share use of MPSCS with ITC on a general basis. Based on the record, we grant both requests.

II. BACKGROUND

2. Michigan is the licensee of MPSCS, a statewide 800 MHz digital trunking system that provides communications for state agencies, the Michigan State Police, and over 1200 other county, city, township, and tribal public safety agencies. The network has more than 220 base transmitter sites and serves over 59,000 radio users. Michigan states that MPSCS "represents an investment of over \$350

1 47 C.F.R. § 90.179(a).

2 See Request for Waiver of Rule Section 90.179 for the Michigan Public Safety Communications System (Jan. 28, 2008) (DE Request); see also Supplemental Information for Waiver Requests at 3 (Apr. 1, 2009) (Supplemental Request) (stating that DE would use MPSCS "only during emergencies, during training exercises, or occasionally to test radios.").

3 See Request for Waiver of the Commission's Rule Section 90.179(a) to Allow ITC to Share Use of the Michigan Public Safety Communications System (Oct. 16, 2008) (ITC Request). Because Michigan and ITC have requested that ITC be allowed to use MPSCS on a general basis, we disregard their original proposal to share MPSCS during emergencies only. See DE Request at 1.

4 Supplemental Request at 1. Michigan operates under call sign WPAT830.

5 Id. at 1-2.

million by the citizens of Michigan”⁶ and constitutes “the nation’s largest operating statewide public safety communications system.”⁷

3. ITC and DE are both electrical power transmission companies.⁸ DE states that it provides generation and transmission of electrical power for portions of eastern Michigan,⁹ and identifies the metropolitan Detroit area as its primary service area.¹⁰ DE also operates the Fermi nuclear power plant, located halfway between Detroit and Toledo, Ohio.¹¹ ITC states that it serves “many areas of Michigan including the densely populated southeastern counties comprising the Detroit metropolitan area,” although “[m]any of ITC’s high voltage transmission lines traverse largely rural areas of eastern Michigan.”¹²

4. Section 90.179(a) of the Commission’s rules, which governs sharing of Part 90 frequencies, provides that “persons may share a radio station only on frequencies for which they would be eligible for a separate authorization.”¹³ Michigan acknowledges that as electric utilities, DE and ITC are not eligible for a separate authorization to use Michigan’s 800 MHz public safety spectrum in the absence of a waiver.¹⁴ Accordingly, Michigan requests waivers of Section 90.179(a) to allow DE to use MPSCS during emergencies and for ITC to use MPSCS on a general basis.

5. Michigan, DE, and ITC (collectively Petitioners) request that DE and ITC be permitted to use MPSCS “for exchange of critical information with government agencies,” and as a backup for DE’s and ITC’s own communications systems.¹⁵ Petitioners explain that by accessing selected emergency talk groups and mutual aid channels, DE and ITC could “instantly communicate directly with various state government, emergency management and public safety agencies within Michigan during emergency situations.”¹⁶ Petitioners consider this “a vital capability due to the critical nature of the services” that DE and ITC provide.¹⁷ Additionally, MPSCS states that its “integral long outage duration backup power capability” could provide DE and ITC with backup power in the event of a blackout.¹⁸ Petitioners cite the “Northeast Power Blackout of 2003,” which affected Michigan, as a recent emergency that “highlighted the vulnerability of the nation’s electrical power grid.”¹⁹ They contend that disruption of the electrical power grid by weather or other circumstances “is a very real possibility” and that DE and ITC must have emergency access to MPSCS in order to ensure “rapid and orderly restoration of critical services to the

⁶ *Id.* at 2.

⁷ DE Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ Supplemental Request at 3.

¹¹ *Id.* at 6.

¹² ITC Request at 2.

¹³ 47 C.F.R. § 90.179(a).

¹⁴ *See* DE Request at 1; *see also* 47 C.F.R. § 90.20.

¹⁵ DE Request at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

citizens of Michigan” in the event of a power outage.²⁰

6. Michigan and DE state that they seek to have DE operate on MPSCS “on a non-profit cost sharing basis under terms of agreements” that would “spell out the specific terms and conditions of [DE’s] use” of the network.²¹ They assert that DE’s emergency use of MPSCS would involve use of fewer than 20 radios.²² In the Detroit metropolitan area, where DE primarily operates, MPSCS has “a substantial number of channels” including a “simulcast subsystem that provides service to the central core of Detroit [and] provides 22 trunking channels.”²³ Thus, Michigan and DE do not anticipate “any significant impact to network loading” resulting from the addition of DE’s radios, which “would primarily be used for interoperability only during emergencies” affecting DE facilities or in which DE assists in restoring power.²⁴ Michigan and DE further state that Michigan has obtained approval letters from many southeastern Michigan county emergency management and public safety agencies regarding DE’s proposed use of MPSCS during emergency situations.²⁵ Moreover, they contend that the close proximity of the Fermi nuclear power plant to multiple large cities calls for communications between DE and public safety to “be as comprehensive and reliable as possible” in the event of an emergency.²⁶ Michigan and DE thus contend that their proposal to share MPSCS during emergencies is consistent with Commission precedent granting waivers of Section 90.179(a) to permit sharing arrangements between public safety and utilities to enhance the operations of both entities.²⁷

7. Michigan and ITC request that ITC be permitted to use MPSCS on a general basis. They contend that allowing ITC to use MPSCS will enhance restoration of critical electrical power services in times of emergency and facilitate communication between the state’s public safety and emergency management personnel and ITC crews and management.²⁸ Michigan and ITC further state that ITC anticipates that only 50 of its radios would be active at any given time” on the MPSCS network,²⁹ and that its radio users would “make a limited number of transmissions (estimated at 15 to 20 per radio per day).”³⁰ Moreover, ITC emphasizes that its loading impact on MPSCS will be limited by virtue of being spread over a large and primarily rural service area.³¹ Michigan and ITC also anticipate that ITC will use MPSCS primarily during daylight working hours, which is “not normally a peak use period for public safety users,” and that the ITC’s use will consist primarily of “brief communications with ITC’s Novi and Ann Arbor facilities for dispatch assignments and transmission line switching.”³² Furthermore, Michigan

²⁰ *Id.*

²¹ DE Request at 2.

²² Supplemental Request at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ DE Request at 2.

²⁶ Supplemental Request at 6.

²⁷ *See id.* at 4 (recognizing that “previous requests for waiver of Section 90.179(a) [have] involved sharing facilities and frequencies brought to the table by both parties,” but insisting that “the critical nature of the facilities and service [DE] provide[s] and the welfare of the citizens of Michigan override any considerations of shared facilities and frequencies”).

²⁸ ITC Request at 4.

²⁹ Supplemental Request at 3.

³⁰ ITC Request at 3.

³¹ Supplemental Request at 3. ITC’s radios “[would] be used in primarily rural areas of the Lower Peninsula of Michigan north of an east-west line running through the city of Saginaw.” ITC Request at 2-3.

³² Supplemental Request at 3.

and ITC note that in the event ITC's use of the network inhibits access by public safety users, MPSCS will be able to assign lower priority to ITC radios, restrict their access to certain sites, or shut down their access entirely.³³ Michigan also states that it will regularly evaluate the grade of service at each network transmitter site and can adjust any site's channel capacity "to insure an adequate grade of service for public safety users."³⁴

8. Michigan and ITC contend that a waiver of Section 90.179(a) to permit ITC to share Michigan's 800 MHz frequencies would promote interoperability and enhance spectrum efficiency, thus serving the public interest. They state that ITC "would become a member of the MPSCS though a membership agreement" that "would spell out the specific terms and conditions of ITC's use of the MPSCS"³⁵ and that ITC would operate "on a non-profit cost sharing basis."³⁶ Moreover, "[p]art of ITC's commitment to MPSCS will be to fund the addition of infrastructure (additional base stations) if necessary in areas where ITC's usage has a negative impact on the availability of the network to public safety users."³⁷ ITC asserts that its membership in MPSCS would "also bring access to power service frequencies" for public safety users near the Canadian border, where public safety spectrum may be scarce.³⁸ Michigan and ITC contend that their proposal is consistent with Commission precedent granting waivers of Section 90.179(a) to permit sharing arrangements between public safety and utilities to enhance the operations of both entities.³⁹

III. DISCUSSION

9. 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;⁴⁰ 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.⁴¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁴²

10. We agree with Michigan that neither DE nor ITC is eligible for a separate authorization

³³ *Id.* at 3-4.

³⁴ *Id.* at 3.

³⁵ ITC Request at 2.

³⁶ DE Request at 2.

³⁷ Supplemental Request at 3.

³⁸ ITC Request at 3. Although ITC does not hold licenses to any 800 MHz frequencies, Michigan "believes that allowing ITC to share the MPSCS network [would] encourage them to transition their communications to 800 MHz" and eventually obtain licenses to 800 MHz frequencies that it could contribute to MPSCS. Supplemental Request at 4.

³⁹ *See* Supplemental Request at 4 (recognizing that "previous requests for waiver of Section 90.179(a) [have] involved sharing facilities and frequencies brought to the table by both parties," but insisting that "the critical nature of the facilities and service [ITC] provide[s] and the welfare of the citizens of Michigan override any considerations of shared facilities and frequencies").

⁴⁰ 47 C.F.R. § 1.925(b)(3)(i).

⁴¹ 47 C.F.R. § 1.925(b)(3)(ii).

⁴² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

to use MPSCS under Section 90.20(a).⁴³ The purpose of Section 90.179(a), *inter alia*, is to ensure that adequate spectrum is available for each service category (*i.e.*, Public Safety and Industrial/Business), and to avoid interference to communications from incompatible services.⁴⁴ Thus, neither DE nor ITC can share Michigan's public safety frequencies absent a waiver of Section 90.179(a).

11. We find that Petitioners have shown good cause to warrant waiver of Section 90.179(a). Michigan has demonstrated that it has adequate spectrum to accommodate the planned sharing of its 800 MHz MPSCS network with DE and ITC. Moreover, we find it important that Michigan has established sharing agreements with these two entities that will protect the viability of the MPSCS network for public safety use. For example, the parties have included provisions to prioritize public safety agency use in the event network capacity proves inadequate. We also find it important that ITC has agreed to contribute power service frequencies to MPSCS and to fund construction of additional infrastructure if necessary to mitigate its impact on the network. Thus, we find that grant of the waivers would not frustrate the purpose of Section 90.179(a) of ensuring that adequate spectrum exists and would not cause interference to communications from incompatible services. We also find that grant of the waivers is in the public interest because it will improve the ability of public safety and DE/ITC to communicate with one another and coordinate power restoration in times of emergency. We therefore find that Petitioners have satisfied the waiver criteria with respect to the 800 MHz frequencies used in the MPSCS network.

IV. CONCLUSION

12. For the reasons stated herein, we grant both DE's and ITC's waiver requests with respect to Michigan's 800 MHz public safety channels. Because our decisions are based on the specific applications before us, we will require separate waivers for utilities other than DE or ITC that seek to use 800 MHz public safety spectrum in the MPSCS network.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.925, 90.179(a) and 90.523 of the Commission's rules, 47 C.F.R. §§ 1.925, 90.179(a), 90.523, that the Waiver Requests by the State of Michigan and Detroit Edison and the State of Michigan and ITC Transmission ARE GRANTED.

14. We take this action under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
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Public Safety and Homeland Security Bureau

⁴³ Under Section 90.20(a), DE and ITC are not among the entities "eligible to hold authorizations in the Public Safety Pool." See 47 C.F.R. § 90.20(a).

⁴⁴ Douglas Electric Cooperative, *Order*, 21 FCC Rcd 11298, 11298 ¶ 7 (PSHSB 2006).