

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

In the Matter of
PRAIRIE POWER, INC.
Request for Waiver of Section 90.179(a) of the
Commission's Rules

ORDER

Adopted: April 10, 2012

Released: April 10, 2012

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

I. INTRODUCTION

1. On March 6, 2012, Prairie Power, Inc. and its ten member electric cooperative (collectively PPI) filed a Request for Waiver of Section 90.179(a) of the Commission's Rules to permit it to share 800 MHz frequencies licensed to the State of Illinois as part of its statewide public safety network, known as STARCOM21. Based on the record, we grant the request.

II. BACKGROUND

2. The STARCOM21 network uses channels in the 700 MHz and 800 MHz bands to provide public safety communications to the Illinois State Police and numerous other state, county and local agencies. Ameren, an electric and gas utility, uses STARCOM21 800 MHz frequencies pursuant to a waiver under Section 90.179(a). Approximately 24,000 radios operate each day on STARCOM21.

3. PPI is a "member-owned, not-for-profit electric generation and transmission cooperative that produces and supplies wholesale electricity to ten electric distribution cooperatives in central Illinois." PPI member distribution cooperatives provide electric service to roughly 78,000 customers in their respective service areas. To support their activities, PPI and its members "operate land mobile radio systems, primarily in the VHF and UHF bands." PPI and its members maintain approximately 140

1 Request for Waiver of Section 90.179(a) of the Commission's Rules, filed by Prairie Power, Inc. (dated Mar. 6, 2012) (Waiver Request). The PPI members include: Adams Electric Cooperative, Camp Point, Illinois; Coles-Moultrie Electric Cooperative, Mattoon, Illinois; Eastern-Illini Electric Cooperative, Paxton, Illinois; Farmers Mutual Electric Company, Geneseo, Illinois; Illinois Rural Electric Cooperative, Winchester, Illinois; McDonough Power Cooperative, Macomb, Illinois; Menard Electric Cooperative, Petersburg, Illinois; Shelby Electric Cooperative, Shelbyville, Illinois; Spoon River Electric Cooperative, Canton, Illinois; Western Illinois Electric Co-op, Carthage Illinois. Id. at Attachment A.

2 47 C.F.R. § 90.179(a).

3 Waiver Request at 1. PPI explains that Illinois uses frequencies in both the 700 MHz and 800 MHz bands. Id. PPI states that it seeks access only to the 800 MHz frequencies. Id.

4 Id. at 2.

5 Id., citing State of Illinois, Order, 23 FCC Rcd. 437 (PSHSB 2008).

6 Waiver Request at 2.

7 Id.

8 Id.

9 Id.

mobile and portable radios.¹⁰ However, PPI cites the lack of interoperability with public safety and Ameren as the basis for the instant waiver request.

4. PPI states that “[m]ost of [its] members operate separate systems without any form of interoperability, despite their need to dispatch and coordinate repair crews during emergencies to clear and restore downed power lines and interrupted service and to coordinate electric transmission and delivery.”¹¹ It further notes that “[a]nother critical gap is the existing systems’ lack of interoperability with the public safety agencies and other utilities with whom PPI and its member cooperatives must often communicate during emergencies.”¹² For example, immediately after severe weather events, fallen power lines and utility poles can often hinder first responders’ ability to reach those in need of medical assistance or rescue.¹³ PPI claims public safety entities depend “on robust lines of communication with PPI and its members to ensure that damaged power lines have been rendered inert before State and local personnel can safely undertake law enforcement, rescue and repair operations.”¹⁴

5. PPI notes specifically its need for interoperability with neighboring Ameren, a major investor-owned electric and gas utility that provides wholesale power delivery services to PPI.¹⁵ PPI notes Ameren and PPI must coordinate power delivery paths, which require communication between PPI and Ameren dispatch centers and mobile users.¹⁶ To illustrate the importance of interoperability, PPI recounts a major storm during the summer of 2011 where “PPI employees had to drive approximately ten miles during the storm to make cellular telephone contact with PPI’s and Ameren’s dispatch centers to coordinate” the safe restoration of electricity.¹⁷ PPI seeks a waiver of the Commission’s Rules to permit the shared use of 800 MHz public safety frequencies, in part to avoid situations like the summer 2011 storm.¹⁸

6. Section 90.179(a), which governs sharing of Part 90 frequencies, states that entities “may share a radio station only on frequencies for which they would be eligible for a separate authorization.”¹⁹ PPI requests this waiver because, as electric utility providers operating on Industrial/Business pool frequencies, they are not eligible for a separate authorization under Section 90.20 of the Commission’s Rules²⁰ to use STARCOM21’s 800 MHz public safety spectrum.²¹

7. PPI submits that Illinois determined that PPI is eligible to subscribe to the network and that PPI’s land mobile requirements will not limit STARCOM21’s public safety operations.²² PPI notes that STARCOM21 “has extremely light usage in rural areas of the state”, whereas PPI and its members operate extensively in rural areas with “minimal communications needs” in the urban areas of the state.²³

¹⁰ *Id.*

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ 47 C.F.R. § 90.179(a).

²⁰ 47 C.F.R. § 90.20.

²¹ Waiver Request at 1.

²² *Id.* at 4.

²³ *Id.*

8. PPI proposes to operate 140 radios dispersed over a 44-county, primarily rural, service area.²⁴ PPI also states that their presence on STARCOM21 would “on average, result in an increase of fewer than three mobile users in each of those counties,” causing only a negligible increase in the demand for and stress on STARCOM21.²⁵ Moreover, PPI notes that Illinois and PPI will enter into a “Use Agreement” incorporating the same operational rules established relative to Ameren.²⁶ The Use Agreement will also grant priority to public safety agencies’ communications over PPI’s, in the event that STARCOM21 cannot accommodate both.²⁷ Because of this prioritization for public safety entities and the minimal added stress on STARCOM21, Illinois supports PPI’s waiver request.²⁸ Finally, PPI notes that the Illinois State Police and Ameren support PPI’s waiver request.²⁹

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;³⁰ 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.³¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.³²

10. We agree PPI is not eligible for a separate authorization to use 800 MHz public safety frequencies under Section 90.20,³³ and thus cannot share 800 MHz frequencies licensed to Illinois without a waiver of Section 90.179(a).³⁴ 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.³⁵

11. Here, we find PPI has demonstrated that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case. We accept PPI’s statement that STARCOM21 has adequate spectrum to accommodate sharing of 800 MHz frequencies with PPI. We agree that PPI’s presence on the STARCOM21 network will likely “only result in a *de minimis* increase in demand”³⁶ for the network, especially considering that PPI will agree to always accept lower priority

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4-5.

²⁸ *Id.*

²⁹ See *id.* at Attachment B: Letter from Gary J. Cochran, Illinois State Police, to James Barnett, Jr., Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, dated Feb. 27, 2012; Letter from Michael T. Sullivan, Ameren Illinois Company, to Marlene Dortch, Secretary, Federal Communications Commission, dated Nov. 30, 2011.

³⁰ 47 C.F.R. § 1.925(b)(3)(i).

³¹ 47 C.F.R. § 1.925(b)(3)(ii).

³² *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).

³³ See 47 C.F.R. § 90.20(a).

³⁴ 47 C.F.R. § 90.179(a).

³⁵ *Douglas Electric Cooperative, Order*, 21 FCC Rcd 11298, 11298 ¶ 7 (PSHSB 2006).

³⁶ Waiver Request at 6.

than other public safety communications on STARCOM21.³⁷ Additionally, given the relatively small number of additional radios that would be operating on STARCOM21 as a result of PPI's shared use, we think it unlikely that the proposed agreement would result in interference. Moreover, we note that PPI and its members cover mostly rural areas of Illinois where the STARCOM21 network is lightly used. Finally, we are persuaded by the support for the waiver from the Illinois State Police and Ameren.

12. We also find that granting this waiver would serve the public interest by improving PPI's ability to communicate and interoperate with public safety entities.³⁸ For example, grant of this waiver will enhance the speed with which PPI and its members can interoperate with public safety and Ameren as well as respond to critical electrical outages or emergencies in rural areas where PPI and its members operate. In sum, we find PPI satisfies the waiver criteria for shared use of Illinois STARCOM21 800 MHz public safety frequencies.³⁹

13. We also seek to ensure that grant of this waiver request does not impede 800 MHz rebanding. As part of 800 MHz rebanding, Sprint Nextel Corporation (Sprint) is required to reband Illinois' facilities operating in the pre-rebanding NPSBAC band to replacement channels in the new NPSBAC band (former Channels 1-120).⁴⁰ PPI and its members, however, are not subject to rebanding, and the timing and cost of making any changes necessary to integrate PPI's users into the STARCOM21 system are contractual matters between Illinois and PPI. Therefore, we find grant of this waiver to be independent of band reconfiguration: Sprint is not required to pay any costs associated with implementing the waiver, nor may Illinois or Sprint rely on this waiver to request a delay in meeting its rebanding obligations.

IV. ORDERING CLAUSES

14. 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 filed by Prairie Power, Inc. on March 6, 2012 is GRANTED to the extent indicated herein.

15. This action is taken 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

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

³⁷ *Id.*

³⁸ *See, e.g.*, State of Michigan and Detroit Edison/ State of Michigan and ITC Transmission, *Order*, 27 FCC Rcd 214 (PSSB 2012); State of Colorado and Holy Cross Electric Association, Inc., 25 FCC Rcd. 8131; State of Ohio and Ohio Rural Electric Cooperatives, *Order*, 24 FCC Rcd. 2289 (PSSB 2009); Douglas Electric Cooperative, 21 FCC Rcd. 11298; Commonwealth of Pennsylvania and GPU Energy, *Order*, 14 FCC Rcd. 14029 (WTB PSPWD 1999).

³⁹ Because our decision is based on the specific application before us, however, we will continue to require separate waivers for other utilities seeking to use 800 MHz public safety spectrum on STARCOM21.

⁴⁰ *See generally* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, 19 FCC Rcd 14969 (2004) as amended by *Erratum*, 19 FCC Rcd 19651 (WTB PSCID 2004), and *Erratum*, 19 FCC Rcd 21818 (WTB PSCID 2004).