



Federal Communications Commission
Washington, D.C. 20554

November 15, 2013
DA 13-2184

Mr. Jerome T. Younger, P.E.
Deputy Secretary and State Transportation Engineer
Kansas Department of Transportation
700 S.W. Harrison Street
Topeka, Kansas 66603-3745

RE: Section 90.179(g) of the Commission's Rules

Dear Mr. Younger:

This responds to your September 4, 2013 inquiry on behalf of the State of Kansas, Department of Transportation (KDOT)¹ seeking clarification on whether or not internal Federal-to-Federal communications are permitted over a radio system operating on FCC-regulated frequency bands under Section 90.179(g) of the Commission's rules.² By this letter we confirm that Section 90.179(g) permits the type of communications you describe.

Specifically, you indicate that the State of Kansas is entering into an agreement to permit officials from the Department of Justice (DOJ) to "use the Kansas Statewide Interoperable Communications System (KSICS), a statewide, P25 trunked system operating in the 800 MHz band."³ You state that DOJ officials on the KSICS network will facilitate "interoperable federal-to-state/local communications" but note that DOJ officials will also conduct "internal federal to federal communications" over the KSICS system.⁴ Therefore, you request that the FCC affirm in writing "that the arrangement is permissible under the FCC rules and regulations."⁵

Under Section 1.2 of its Rules, the Commission "may [...] issue a declaratory ruling terminating a controversy or removing uncertainty."⁶ It is well-established that we have broad discretion whether to issue such a ruling.⁷ In the instant matter, KDOT frames its request as a need for rule clarification to remove uncertainty regarding sharing of 800 MHz public safety radio facilities with Federal agencies. We believe clarification of Section 90.179(g) is necessary.

In 1998, as part of the Commission's efforts to streamline Part 90 of the rules and reduce regulatory requirements, the Commission proposed to amend its rules to remove the restriction then

¹ Letter dated September 4, 2013, from Jerome T. Younger, P.E., Deputy Secretary and Transportation Engineer, Kansas Department of Transportation, to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau (KDOT Letter).

² 47 C.F.R. § 90.179(g) ("licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis.").

³ KDOT Letter at 1.

⁴ *Id.*

⁵ *Id.*

⁶ 47 C.F.R. § 1.2. *See* 5 U.S.C. § 554(e).

⁷ *See, e.g.,* Telephone Number Portability, *Order*, CC Docket No. 95-116, 19 FCC Rcd 6800, 6810 ¶ 20 (2004).

contained in Section 90.179 of the Commission's Rules preventing state and local agencies from sharing their facilities in the Public Safety Pool with Federal Government entities.⁸ The Commission recognized that "[b]ecause Federal government entities are not eligible for Part 90 authorizations, Part 90 licensees would be precluded from entering into sharing arrangements with Federal government entities pursuant to Section 90.179(a)."⁹ Additionally, the Commission observed, that "[u]nder the provisions of Section 90.421, communications with Federal government entities are limited to emergency situations where coordination and interoperability capability are necessary."¹⁰ Consequently, the Commission recognized that the "Part 90 rules [in effect at the time] do not provide any means by which a public safety licensee can permit general shared use of a private land mobile radio station by a Federal government entity."¹¹

In the *Part 90 Biennial Review Report and Order*, however, the Commission concluded that eliminating the restrictions against public safety licensees sharing radio systems with Federal entities "serves the public interest by fostering the realization of interoperability amongst state and local public safety entities and Federal government agencies."¹² The Commission observed "that many local government, police and fire entities, are licensees of multi-channel radio systems while at the same time, there may be Federal government agencies that require communications in the same geographical area, but, because of circumstances unique to Federal agencies, lack access or the capability to obtain such communications."¹³ The Commission further noted "that such sharing may benefit Part 90 licensees because they could be compensated for a portion of the total system costs under the sharing arrangement."¹⁴ Consequently, the Commission amended Section 90.179 of the Commission's Rules by adding new paragraph (g) to provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis.¹⁵

⁸ 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services, WT Docket No. 98-182, *Notice of Proposed Rulemaking*, 13 FCC Rcd 21133, 21134 ¶ 2; 21140-41 ¶¶ 17-22 (1998).

⁹ *Id.* at 21140 ¶ 17.

¹⁰ *Id.* at ¶ 18. Section 90.421, 47 C.F.R. § 90.421, allows a public safety licensee to share its mobile stations, including handheld units, with persons other than the licensee for communications that will enable the licensee to meet its communications requirements in connection with the activities for which it is licensed.

¹¹ *Id.* The Commission noted that the Part 90 rules provided a mechanism by which 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licensees could share their facilities with Federal Government agencies on a for-profit private carrier basis. *Id.* at 21141 ¶ 21. The Commission suggested that its proposed rule change would be consistent with the approach it took in allowing SMR licensees share their facilities with Federal Government users. *Id.*

¹² 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services, WT Docket No. 98-182, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 16673, 16682 ¶ 19 (2000).

¹³ *Id.* at 16681-82 ¶ 19.

¹⁴ *Id.* at 16682 ¶ 19.

¹⁵ *Id.* In the contemporaneous *700 MHz Public Safety Narrowband* proceeding, the Commission stated that "State or local governmental licensees in the 700 MHz band can allow an unlicensed entity to use their stations—on a revocable-at-will or 'guest' basis—pursuant to Section 90.179 and 90.421 of the Commission's Rules." *See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements through the Year 2010, Second Memorandum Opinion and Order*, WT Docket No. 96-86, 15 FCC Rcd 16844, 16868-69 ¶ 54 (2000); *see, e.g.*, 47 C.F.R. 90.179(g) ("State governments authorized to operate radio systems under § 90.529 may share the use of their systems (for public safety services not made commercially available to the public) with [...] Federal Government entities.").

As a result of the amendment to Section 90.179 of the Commission's rules, state and local government agencies, including Kansas, are now permitted, by Section 90.179(g) to enter into sharing agreements with Federal government entities on a cost-shared basis. Of particular relevance to Kansas' inquiry, Section 90.179 provides that "[a] station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization."¹⁶ Additionally, Section 90.179(c) provides that participants (*i.e.* the end users) in a sharing arrangement "may use mobile stations, and control stations or control points authorized to the licensee."¹⁷

Section 90.179, however, is predicated on the licensee and the end user complying with the provisions of Section 90.179(b), (d) and (e).¹⁸ Specifically, the Commission licensee is responsible for ensuring that the authorized facility is used only by persons, and for purposes, consistent with Part 90.¹⁹ For example, "[i]f the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement between the licensee and each participant which sets out (1) the method of operation, (2) the components of the system which are covered by the sharing arrangements, (3) the method by which costs are to be apportioned, and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control."²⁰ Thus, Section 90.179(g) permits Federal-to-Federal as well as Federal-to-non-Federal communications on non-Federal Government public safety frequencies on a cost-shared, non-profit basis.

In sum, we clarify that Section 90.179(g) permits internal Federal-to-Federal communications. Specifically, in light of the (1) the plain language of Section 90.179; (2) the Commission's desire to provide public safety radio service licensees the operational flexibility to engage in "general" shared use of non-Federal facilities with Federal agencies; (3) the public interest benefits of state/local sharing arrangements with Federal agencies; and (4) the absence of any explicit limitation against Federal intra-agency communications in the *Part 90 Biennial Review* proceeding; we conclude that Section 90.179(g) of the Commission's rules permits internal Federal-to-Federal communications as well as inter-agency Federal to state/local communications, provided that such sharing complies with all the requirements of Section 90.179 of the Commission's rules.

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, that the request filed by the Kansas Department of Transportation, on September 4, 2013, IS GRANTED.

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

¹⁶ 47 C.F.R. § 90.179.

¹⁷ 47 C.F.R. § 90.179(c). Mobile stations include handheld units. *See* 47 C.F.R. § 90.7.

¹⁸ 47 C.F.R. § 90.179(b), (d) and (e).

¹⁹ 47 C.F.R. § 90.179(b).

²⁰ 47 C.F.R. § 90.179(d). These agreements must be kept as part of the station records. *Id.*