

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

In the Matter of	)	
	)	
STATE OF MAINE –	)	ULS File No. 0006183738
MSCOMMNET PROJECT	)	
	)	
Request For Waiver of Sections 90.35(b)(2)(ii)	)	
and 90.187(d) of the Commission’s Rules	)	

**ORDER**

**Adopted: June 20, 2014**

**Released: June 20, 2014**

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

**I. INTRODUCTION**

1. On, March 14, 2014, the State of Maine – MSCommNet Project (Maine) filed an application to modify its existing authorization for private land mobile radio (PLMR) station WQRI384, operating on frequency 153.1775 MHz at Mt. Agamenticus, in York County, Maine.<sup>1</sup> In connection with its application, Maine seeks a waiver of two Commission rules that require it to seek consent for its application from third parties:<sup>2</sup> Section 90.35(b)(2)(ii), which requires Maine to obtain consent from the certified frequency coordinator for frequency 153.1775 MHz;<sup>3</sup> and Section 90.187(d) which requires an applicant for a trunked station whose interference contour intersects the service contour of another station to obtain the consent of the licensee that would be affected by the interference.<sup>4</sup>

2. The interference contour of Maine’s existing station intersects the service contour of a neighboring co-channel licensee whose license was granted after Maine’s current authorization. Under the modification proposed by Maine, there would be no increase in Maine’s interference contour. Accordingly, and for the reasons detailed below, we grant Maine’s waiver requests.

<sup>1</sup> See ULS application number 0006183738, filed March 4, 2014 (Mt. Agamenticus Application).

<sup>2</sup> See Letter from Craig Hitchings, Radio Project Office Manager, Maine Statewide Communications Network to Federal Communications Commission, Public Safety and Homeland Security Bureau (May 7, 2014) (attached to Mt. Agamenticus Application) (Maine May 2014 Letter).

<sup>3</sup> See 47 C.F.R. § 90.35(b)(2)(ii) (indicating that a letter symbol in the “Coordinator” column of the frequency table designates the mandatory certified frequency coordinator for the associated frequency but noting that any certified frequency coordinator may coordinate the frequency provided it obtains a consent letter from the mandatory frequency coordinator).

<sup>4</sup> See 47 C.F.R. § 90.187(d).

## II. BACKGROUND

3. Maine is upgrading its statewide public safety radio communications network from a series of multiple independent PLMR systems, which Maine describes as “outdated, difficult to maintain, and no longer adequate to serve respective departments’ critical needs,”<sup>5</sup> to a new statewide radio system.<sup>6</sup>

4. As part of this system upgrade, on May, 20, 2013, the Commission granted Maine an authorization for WQRI384, allowing Maine to operate an “FB8” trunked base station on Industrial/Business Pool frequency 153.1775 MHz at the Mt. Agamenticus location.<sup>7</sup> During coverage testing for the new statewide VHF trunked radio system, Maine discovered that the top of Mt. Agamenticus shields the signal from its base station, degrading radio coverage at the base of the mountain.<sup>8</sup> Maine states that further testing revealed it could overcome the shielding issue by raising the antenna height of the base station by 13 meters.<sup>9</sup>

5. Consequently, Maine prepared the instant modification application seeking authority to raise the antenna height at Mt. Agamenticus. Because the application involves frequency 153.1775 MHz, Section 90.35(b)(2)(ii) of the Commission’s rules requires Maine to obtain consent from the Enterprise Wireless Alliance (EWA), the Commission’s designated Petroleum Frequency Coordinator, before filing the modification application.<sup>10</sup>

6. On December 17, 2013, Maine’s frequency coordinator, the American Association of State Highway and Transportation Officials (AASHTO), attempted to obtain EWA’s consent for the modification application.<sup>11</sup> On December 31, 2013, EWA responded to AASHTO declining concurrence because Maine’s application “fails FB8 analysis” with respect to an application filed on December 5,

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<sup>5</sup> See State of Maine – MComNet Project, Request for Waiver of Sections 90.35(a), 20.9(a)(6), 22.377, and 22.565(f) of the Commission’s Rules, *Order*, 27 FCC Rcd 8891 at ¶ 2 (citing the Maine waiver request associated with the applications listed in Tables 1 and 2 of the appendix)(*Maine I/B Waiver Order*).

<sup>6</sup> *Maine I/B Waiver Order*, 27 FCC 8892 at ¶ 3.

<sup>7</sup> See call sign WQRI384. The FB8 Station Class Code indicates that Maine is operating its base station as a centralized trunked relay station and is exempt from monitoring its channel before transmitting. See Private Land Mobile Radio – Monitoring Levels for Non-Exempt Trunked Systems on Channels Between 150-512 MHz, *Public Notice*, 16 FCC Rcd 21421 (WTB 2001).

<sup>8</sup> See letter from Craig Hitchings, Radio Project Office Manager, Maine Statewide Communications Network to Federal Communications Commission (Feb. 18, 2014) (attached to the Mt. Agamenticus Application) (Maine Feb. 2014 Letter).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 90.35(b)(2)(ii) (indicating that a letter symbol in the “Coordinator” column of the frequency table designates the mandatory certified frequency coordinator for the associated frequency but noting that any certified frequency coordinator may coordinate the frequency provided it obtains a consent letter from the mandatory frequency coordinator). EWA is the mandatory frequency coordinator for any frequency containing an “IP” symbol in the coordinator frequency column. See the Commission’s website at [http://wireless.fcc.gov/services/index.htm?job=licensing\\_3&id=industrial\\_business](http://wireless.fcc.gov/services/index.htm?job=licensing_3&id=industrial_business).

<sup>11</sup> See email from Diane M. Tosoni, Radiosoft to Customer Service, Enterprise Wireless Association (Dec 17, 2013) (included in attachment to Mt. Agamenticus Application labeled “E-mail Correspondence”).

2013 by the South Maine Community College (SMCC),<sup>12</sup> in which SMCC sought to add 153.1775 MHz to its existing license call sign WNSU834.<sup>13</sup>

7. Under Section 90.187(b)(2)(iii) of the Commission's rules, SMCC is considered an "affected" licensee since both licensees are operating on the same frequency and Maine's interfering contour (19 dBu) overlaps SMCC's service contour (37 dBu).<sup>14</sup> Maine did not need to seek concurrence from SMCC for its original authorization to operate on this frequency with a station class code of "FB8," because SMCC had not yet filed its application. But because SMCC now has an authorization to operate on frequency 153.1775 MHz, the Commission's rules require Maine to seek SMCC's written concurrence for any subsequent modifications if Maine seeks to maintain its FB8 status, thus avoiding all monitoring requirements, at the Mt. Agamenticus facility.<sup>15</sup>

8. In response to EWA's letter, Maine, through its frequency coordinator, offered to reduce the effective radiated power (ERP) of its Mt. Agamenticus base station from 25 to 22 watts to avoid expanding the coverage or interference contours from the site despite the 13 meter increase in antenna height.<sup>16</sup> EWA responded that it would only concur if Maine reduced its ERP at Mt. Agamenticus to 5 watts.<sup>17</sup> At the same time, Maine attempted to obtain written consent from SMCC for Maine's proposal to raise the antenna height at Mt. Agamenticus by 13 meters.<sup>18</sup> SMCC, however, refused to provide consent.<sup>19</sup>

9. Consequently, on March 4, 2014, Maine filed its application seeking to raise the antenna height at Mt. Agamenticus without written consent from either EWA or SMCC.<sup>20</sup> To offset its inability to obtain consent from EWA, Maine seeks a waiver of Sections 90.35(b)(2)(ii); and to offset its inability to obtain SMCC's consent, Maine seeks a waiver of 90.187(d).<sup>21</sup> In support of its waiver requests, Maine

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<sup>12</sup> See letter from Julia Biggs, Spectrum Manager, Enterprise Wireless Association to Diane M. Tosoni, Radiosoft (Dec 31, 2013) (attached to Mt. Agamenticus Application labeled "EWA Objection Letter").

<sup>13</sup> See ULS File No. 0006043859 (seeking to add frequency 153.1775 MHz to call sign WNSU834). SMCC's application was granted on February 24, 2014.

<sup>14</sup> 47 C.F.R. § 90.187(d)(1).

<sup>15</sup> 47 C.F.R. § 90.187(d).

<sup>16</sup> See statement from Peter Moncure, CEO Radiosoft (attached to Mt. Agamenticus Application labeled "Statement Over Unresolved Objection").

<sup>17</sup> See email from Diane Tosoni to Julia Biggs (Jan 31, 2014) (included in attachment to Mt. Agamenticus Application labeled "E-mail Correspondence"). See also email from Julia Biggs, Spectrum Manager to Diane Tosoni (Feb 10, 2014) (included in attachment to Mt. Agamenticus Application labeled "E-mail Correspondence") (EWA Feb. 2014 Letter).

<sup>18</sup> See email from Tom Driscoll, Outreach Coordinator, MScCommNet Radio Project Office to Joseph (Jay) Manhardt, Director of Public Safety & Contract Services, Southern Maine Community College (Feb 10, 2014) (included in attachment to Mt. Agamenticus Application labeled "E-Mail Exchanges SoME & SMCC re: LOC").

<sup>19</sup> See email from Tom Driscoll, Outreach Coordinator, MScCommNet Radio Project Office to Craig Hitchings, Radio Project Office Manager, Maine Statewide Communications Network (Feb 12, 2014) (included in attachment to Mt. Agamenticus Application labeled "E-Mail Exchanges SoME & SMCC re: LOC").

<sup>20</sup> See Mt. Agamenticus Application.

<sup>21</sup> Maine May 2014 Letter at 1-2.

includes a plot showing that its proposed modifications will not result in expansion of its currently authorized interfering contour.<sup>22</sup>

### III. DISCUSSION

10. Section 1.925 states that 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;<sup>23</sup> 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.<sup>24</sup> We find that Maine satisfies the first prong of the waiver standard for both of its waiver requests as detailed below.

11. Public Safety and Homeland Security Bureau (Bureau) staff independently plotted both Maine's current and proposed interfering contours.<sup>25</sup> Upon review of these contours, staff agrees with Maine that its proposal to raise the antenna height 13 meters while also reducing ERP from 25 to 22 watts replicates its existing interfering contour, and thus that Maine's proposed modification has the exact spectral footprint as its currently authorized facilities.<sup>26</sup>

12. *Section 90.35(b)(2)(ii) Frequency Coordinator Consent Requirements.* The Commission established frequency coordinator consent requirements for certain frequencies in the Industrial/Business Pool because it recognized that these frequencies, such as those from the former Petroleum radio service, were primarily used by licensees who might have to use them to respond to emergencies which could be "extremely dangerous to the general public."<sup>27</sup> The Commission therefore concluded it was important for coordinators of these frequencies to be "knowledgeable with such special communication needs" in order to maintain the "integrity of the spectrum."<sup>28</sup>

13. EWA provided Maine consent in August 2012 for its original authorization on frequency 153.1775 MHz at Mt. Agamenticus under call sign WQRI384.<sup>29</sup> Although Maine seeks to modify the technical parameters of its facility, these modifications do not affect its currently licensed footprint. Therefore, granting Maine a waiver of the requirement to obtain EWA's consent to modify Maine's authorization does not frustrate the underlying purpose of the consent rule – avoidance of objectionable interference – because Maine's modification has no effect on the spectral footprint to which EWA already consented, and hence poses no greater interference potential to any other licensee on the frequency including SMCC.

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<sup>22</sup> Maine Feb. 2014 Letter at 3-4.

<sup>23</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>24</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>25</sup> Staff plotted the 19 dBu F(50,10) contours for Maine's authorized facilities under call sign WQRI384 and for the facilities it proposes in the Mt. Agamenticus Application.

<sup>26</sup> See Maine Feb. 2014 Letter at 3-4.

<sup>27</sup> See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307, 14329 at ¶ 41 (1997) (*Refarming Second R&O*).

<sup>28</sup> *Id.*

<sup>29</sup> See letter from Mark E. Crosby, President/CEO, Enterprise Wireless Alliance to Peter Moncure, AASHTO (Aug. 2, 2012) (attached to ULS application 0005342117).

14. Furthermore, EWA offers no justification for its demand that Maine significantly shrink its spectral footprint on the frequency by reducing the ERP of the base station to 5 watts to obtain EWA's consent for the proposed modification.<sup>30</sup> We remind EWA that the Commission did not impose consent requirements to give coordinators a *de facto* veto over applications. To the contrary, when it established the consent requirements, the Commission noted that it expects coordinators to "make every effort to accommodate all applicants on these frequencies, regardless of the type of business they conduct."<sup>31</sup> We believe EWA failed to make every effort in this instance to accommodate Maine's request to modify the operating parameters of its Mt. Agamenticus site.

15. *Section 90.187(d) Consent from Affected Licensees.* Section 90.187(d) specifies that a trunked licensee is exempt from monitoring requirements if it obtains written consent from all "affected licensees."<sup>32</sup> Unless exempt, a trunked licensee must monitor its frequencies before transmitting to avoid causing interference to other licensees.<sup>33</sup> Therefore, written consent from an "affected licensee"<sup>34</sup> is an agreement by the affected licensee to accept interference, if it occurs, from a trunking licensee that transmits without monitoring beforehand.

16. Maine was licensed as a trunked "FB8" licensee exempt from monitoring requirements at Mt. Agamenticus when it received its authorization in May 2013 under call sign WQRI384. SMCC did not become an "affected licensee" until February 2014 when it chose to license the same frequency at a location where Maine's Mt. Agamenticus interfering contour (19 dBu) would overlap SMCC's service contour (37 dBu).<sup>35</sup> Thus, SMCC was on notice that it could receive a certain level of interference from Maine when SMCC sought to add frequency 153.1775 MHz to its license.

17. We find, in this instance, that Maine's request for a waiver would not frustrate the underlying purpose of Section 90.187(d) because Maine does no more than maintain the *status quo* by not extending its interference contour toward SMCC. Thus, it avoids causing additional interference to SMCC beyond the level which SMCC was required to accept when it added frequency 153.1775 MHz to its license.

18. *Public Interest.* We find granting Maine's waiver requests is in the public interest. The Bureau has previously stated it finds Maine's upgrade to its statewide public safety radio communications network in the public interest because it will facilitate interoperability between federal, state and local public safety officials.<sup>36</sup> Furthermore, we find it in the public interest for Maine to modify its Mt. Agamenticus site in order to improve radio coverage for the statewide system at this site.

#### IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that the waiver requests associated with ULS File No. 0006183738 filed by State of Maine – MSCommNet Project, pursuant to Section 1.925 of the

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<sup>30</sup> EWA Feb. 2014 Letter.

<sup>31</sup> *Refarming Second R&O*, 12 FCC Rcd 14330 at ¶ 42.

<sup>32</sup> *See* 47 C.F.R. § 90.187(d).

<sup>33</sup> Whether or not an incumbent is an "affected licensee" is determined based upon contour overlap and the incumbent's spectral proximity to the trunked licensee. *See* 47 C.F.R. § 90.187(b).

<sup>34</sup> *See* 47 C.F.R. § 90.187(d)(1).

<sup>35</sup> *See* ULS File No. 0006043859.

<sup>36</sup> *See* State of Maine – MSCommNet Project, Request For Waiver of Section 90.35(a) of the Commission's Rules, *Order*, 28 FCC Rcd 988, 991 at ¶ 11.

Commission's rules, 47 C.F.R. § 1.925, ARE GRANTED and the associated application SHALL BE PROCESSED accordingly.

20. This action is taken under delegated authority pursuant to Sections 0.131, 0.191, 0.331 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.191, 0.331, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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