

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

In the Matter of
STATE OF MICHIGAN
Request for Waiver of Section 90.179(a) of the
Commission's Rules

ORDER

Adopted: September 17, 2015

Released: September 17, 2015

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

I. INTRODUCTION

1. The State of Michigan Department of Telecommunications Management and Budget (Michigan or DTMB) seeks 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 Cherryland Electric Cooperative (CEC) during emergencies and for other purposes. Based on the record, we grant Michigan's request.

II. BACKGROUND

2. The MPSCS is Michigan's statewide 800 MHz digital trunking system providing communications for Michigan's state agencies, the Michigan State Police, and over 1450 other county, city, township, and tribal public safety agencies totaling approximately 68,000 radio users. The MPSCS system utilizes 244 tower sites and represents a significant investment by the citizens of Michigan. Michigan submits that MPSCS represents one of the nation's largest statewide public safety communications systems and provides "infrastructure for fully interoperable communications throughout the entire State of Michigan."

3. The MPSCS uses frequencies primarily in the 800 MHz NPSPAC band, which are allocated for public safety use. If granted, Michigan states that "this waiver will allow non-profit Critical

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 (June 29, 2015) (Waiver Request). Michigan's Department of Telecommunications Management and Budget (DTMB) previously requested a waiver of Section 90.179(a) of the Commission's rules, which states: "(a) Persons may share a radio station only on frequencies for which they would be eligible for a separate authorization." Id. at 1 citing 47 C.F.R. § 90.179(a). The instant waiver request is a revised request replacing the original request that was filed on March 16, 2015. Waiver Request at 1.

3 Id.

4 Id.

5 Id. "MPSCS currently utilizes both 800 MHz and 700 MHz narrowband voice frequencies although the great majority of the system is 800 MHz. Through system and radio configuration, CEC will be restricted from using 700 (continued...)

Infrastructure provider, Cherryland Electric Cooperative (CEC) which is not eligible to use public safety frequencies, use of the 800 MHz public safety frequencies licensed to the MPSCS on a general basis.”<sup>6</sup> Michigan adds that CEC, a non-profit member owned cooperative, provides utility service exclusively to Michigan’s citizens in six (6) counties in Michigan’s northern Lower Peninsula.<sup>7</sup>

4. With grant of this waiver, Michigan states that “CEC will have access to and use the MPSCS system for exchange of critical information with government agencies.”<sup>8</sup> Michigan adds that CEC “would have access to selected emergency and proprietary talk groups on the trunking system.”<sup>9</sup> Michigan states that CEC “would also have access to the 800 MHz analog mutual aid channels.”<sup>10</sup> Michigan submits that “[t]he interoperability provided by this waiver would provide dedicated communication paths between local and regional emergency management offices and public utilities that are today limited to retail grade commercial phone services.”<sup>11</sup> These services, Michigan claims, “have proven to be challenged during times of local emergency conditions and during regular first responder efforts for structure fires and other mandatory joint response emergencies.”<sup>12</sup>

5. “DTMB monitors the radio system network capacity very closely. If necessary, DTMB will adjust affected site’s channel capacity to insure an adequate grade of service for public safety users.”<sup>13</sup> Michigan states that “[p]art of CEC’s commitment to the MPSCS is to fund the addition of infrastructure (additional base stations) at two (2) MPSCS sites in areas where over 90% of their radio system traffic will impact system resource availability.”<sup>14</sup> These base stations, Michigan states “will be licensed using frequencies from the 800 MHz Business and Industrial Land Transportation (B/ILT) Pool.”<sup>15</sup> Thus, Michigan public safety agencies in those areas “will have enhanced access to the system without having to exclusively use dedicated NPSPAC public safety frequencies or provide additional funding.”<sup>16</sup> Michigan states that “CEC has also agreed to share infrastructure, such as tower space on an as needed basis.”<sup>17</sup>

6. Michigan states that “CEC will have a total of about 30 radios but they anticipate that only 20 total would be active at any given time.”<sup>18</sup> Michigan submits that “CEC has indicated that their radio use occurs essentially during daylight working hours as their crews perform maintenance of their

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MHz frequencies on the MPSCS. Therefore [Michigan is] not requesting a waiver for any rules regarding 700 MHz spectrum.” *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2.

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Section 90.179 of the Commission’s rules provides that Business/Industrial Land Transportation licensees may share their systems with public safety eligibles. 47 C.F.R. § 90.179(h).

<sup>18</sup> *Id.*

system arid that the bulk of their use consists of brief communications for dispatch assignments and transmission line switching.”<sup>19</sup>

7. Michigan emphasizes “that the MPSCS has a 24/7/365 Network Communication Center (NCC) which constantly monitors the performance of the network.”<sup>20</sup> According to Michigan, “NCC personnel using the network management system can assign lower priority to CEC radios, restrict their access to only certain sites of the network, or shut down their access to the network entirely should it become evident that their use[, of] the network is negatively impacting public safety agencies access.”<sup>21</sup> Michigan states that “it does not anticipate a network congestion problem but is able to quickly address any issues that could arise.”<sup>22</sup>

8. Michigan cites the Northeast Power Blackout of 2003, which affected much of the Northeastern U.S., the Midwest, and Ontario, Canada, as an example of the vulnerability of the nation's electrical power grid.<sup>23</sup> Disruption of the electrical power grid due to weather, flooding, earthquake, system problems, or terrorist activity is a very real possibility, Michigan claims. During such interruptions, Michigan states that “normal communications channels may also be severely disrupted.”<sup>24</sup> Michigan notes that “[t]he MPSCS has been designed with integral long outage duration backup power capability and proved itself by continuing to fully function throughout the extensive blackout, DTMB firmly believes that allowing CEC to utilize the MPSCS enhances the rapid and orderly restoration of critical services to the citizens of Michigan, without costly and un-necessary duplication of communication infrastructure.”<sup>25</sup>

9. Michigan states that “CEC as part of the Michigan Electric Cooperative Association and in partnership with the Michigan Municipal Electric Association provide mutual aid assistance to other utilities across the state of Michigan in emergency outage situations.”<sup>26</sup> It notes that “[t]he state wide coverage of the MPSCS system would be invaluable to both the utilities and the public safety services to be able to maintain communications between utility organizations and public safety agencies across the state.”<sup>27</sup> DTMB believes it is vital to the public interest to facilitate emergency communications between this Critical Infrastructure provider and Michigan's government, emergency management, and public safety agencies, DTMB specifically requests that Cherryland Electric Cooperative be allowed to use the MPSCS licensed channels for general business use, communications with Michigan government, state and local emergency management, and public safety agencies.<sup>28</sup>

### III. DISCUSSION

10. 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

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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

present case, and that a grant of the waiver would be in the public interest;<sup>29</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>30</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>31</sup>

11. As an initial matter, we note that the Commission has waived the eligibility requirements of Section 90.179 pursuant to the first prong of the waiver standard. Specifically, we waived Section 90.179 and approved Michigan's request to share its 800 MHz public safety system with two electric power transmission companies Detroit Edison (DE) and ITC Transmission (ITC) subject to certain conditions.<sup>32</sup> In both instances, we found that grant of the waiver would not undermine the purpose of Section 90.20 of the Commission's rules: 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.<sup>33</sup> Moreover, we found it important that Michigan has established sharing agreements with DE and ITC that will protect the viability of the MPSCS network for public safety use.<sup>34</sup> For example, the parties included provisions to prioritize public safety agency use in the event network capacity proves inadequate. We also found it important that DE and ITC agreed to contribute B/ILT service frequencies to MPSCS and to fund construction of additional infrastructure to mitigate its impact on the network.<sup>35</sup> Thus, we found it would be in the public interest to approve the proposed sharing arrangement. Because our decision was based on the specific facts then before us, we stated that we would require separate waivers for utilities other than DE and ITC that seek to use 800 MHz public safety spectrum in the MPSCS network.<sup>36</sup>

12. Here, we also find that Michigan has shown good cause to warrant waiver of Section 90.179(a). CEC is not eligible to license public safety spectrum and Michigan has demonstrated that it has adequate spectrum to accommodate the planned sharing of its 800 MHz MPSCS network with CEC. Additionally, CEC agreed to fund construction of additional infrastructure using B/ILT frequencies to mitigate its impact on the MPSCS network. Thus, we find that grant of the waiver 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 waiver is in the public interest because it will improve the ability of public safety and CEC to communicate with one another and coordinate power restoration in times of emergency. We therefore find that Michigan has satisfied the waiver criteria with respect to the 800 MHz frequencies used in the MPSCS network.

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<sup>29</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>30</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>31</sup> *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).

<sup>32</sup> *See State of Michigan, et al, Order*, 27 FCC Rcd 214 (PSHSB 2012) (*Michigan Order*).

<sup>33</sup> *Id.* at 218 ¶ 10 *citing* *Douglas Electric Cooperative, Order*, 21 FCC Rcd 11298, 11298 ¶ 7 (PSHSB 2006).

<sup>34</sup> *Id.* at 218 ¶ 11.

<sup>35</sup> *Id.* In evaluating requests to waive Section 90.179 of the Commission's rules, 47 C.F.R. § 90.179, to enable public safety licensees to share spectrum with utilities, the PSHSB and Wireless Telecommunications Bureau have considered whether the non-public safety entities will be contributing spectrum sufficient for their purposes, so that there will not be a net loss of public safety spectrum. *See, e.g.*, *State of Illinois, Order*, 23 FCC Rcd 437 (PSHSB 2008); *South Carolina, Order*, 13 FCC Rcd 8787 (WTB 1997).

<sup>36</sup> *Michigan Order*, 27 FCC Rcd at 218 ¶ 12.

**IV. CONCLUSION**

13. For the reasons stated herein, we grant Michigan's waiver request. Because our decision is based on the specific facts before us, we will require separate waivers for utilities other than CEC that seek to use 800 MHz public safety spectrum in the MPSCS network. This condition is consistent with our previous decision granting Michigan waivers of Section 90.179 to share its 800 MHz public safety spectrum with electric power transmission companies.

**V. ORDERING CLAUSES**

14. 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 and 90.179(a) of the Commission's rules, 47 C.F.R. §§ 1.925 and 90.179(a) that the Waiver Request by the State of Michigan IS GRANTED.

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

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