



Federal Communications Commission
Washington, D.C. 20554

September 26, 2016

DA 16-1086

Diverse Power Inc.
1400 South Davis Road
La Grange, GA 30241
Attn: Wayne Livingston

Re: FCC File No. 0006948533

Dear Mr. Livingston:

Introduction. We have before us an application and waiver request filed by Diverse Power Inc. (Diverse).¹ Diverse requests waiver of section 90.187 of the Commission's Rules to allow operation of a centralized trunked station at Union City, Georgia, with an interference contour overlapping an existing co-channel station's service contour and a service contour that is completely enveloped by the existing station's interference contour. For the reasons discussed herein, we deny Diverse's waiver request, and will process the application accordingly.

Background. Section 90.187 of the Commission's rules requires that a trunked system monitor the frequencies and employ equipment that prevents transmission on a frequency if a signal from another system is present on it, with certain exceptions.² One of these exceptions is if the licensee obtains the written consent of all "affected licensees."³ Whether an incumbent is an affected licensee depends on both the spectral proximity of the existing and proposed frequencies, and the physical proximity of the existing and proposed facilities. In 2013, the Commission modified section 90.187 to require that the contour analysis used to determine physical proximity be performed by an applicant for a new centralized trunked system to demonstrate both that 1) the proposed system's interference contour (which is the 21 dBu contour for stations in the 421-512 MHz band) will not overlap any spectrally proximate incumbent system's service contour (which is the 39 dBu contour for stations in the 421-512 MHz band); and 2) its proposed service contour will not be overlapped by the interference contour of any incumbent system (a "reverse" contour analysis).⁴

Upson County Electric Membership Corporation (Upson County EMC) is a member-owned electric cooperative serving portions of Upson, Crawford, Meriwether, Talbot, Pike, and Taylor Counties in Georgia.⁵ It operates Station WNAP458 with a base station in Thomaston, Georgia, on, e.g., frequency pair 451/456.0500 MHz. Station WNAP458's 39 dBu service contour encompasses all or part of thirteen counties,⁶ but its authorized mobile operating area consists only of Upson, Crawford, Monroe, Lamar, Meriwether, and Talbot Counties.

¹ See FCC File No. 0006948533 (filed Sept. 17, 2015, amended Nov. 11, 2015, Jan. 11, 2016, and Jan. 21, 2016), Waiver and Expedited Action Requested (Waiver Request) and Additional Information for Waiver (Supplemented Waiver Request).

² 47 CFR § 90.187(b).

³ 47 CFR § 90.187(d).

⁴ See *Amendment of Part 90 of the Commission's Rules*, Fifth Report and Order, 28 FCC Rcd 5924, 5928, para. 11 (2013) (*Part 90 Fifth Report and Order*); see also 47 CFR § 90.187(d)(1), (3).

⁵ See Upson County Electric Membership Corporation; *About Upson EMC*, <http://www.upsonemc.com/About%20Upson%20EMC.htm> (last visited June 7, 2016).

⁶ See Waiver Request at 2.

Diverse is a member-owned electric cooperative that provides electric energy-related services to Troup, Harris, Heard, Meriwether, Muscogee, Coweta, Quitman, Randolph, Clay, Calhoun, and parts of Early, Stewart, and Terrell Counties in Georgia.⁷ It proposes to operate on, *e.g.*, frequency pair 451/456.0500 MHz with a base station at Union City, Georgia (location 3 of the application). The proposed 21 dBu interference contour overlaps Upson County EMC's 39 dBu service contour, and the proposed 39 dBu service contour is completely enveloped by Upson County EMC's 21 dBu interference contour.⁸ Consequently, Upson County EMC is an affected licensee. Diverse requested Upson County EMC's written consent, explaining that its proposed interference contour overlaps Upson County EMC's 39 dBu service contour only but not Upson County EMC's authorized mobile operating area, and offering to take any appropriate measures to prevent interference.⁹ Upson County EMC declined to consent, however, due to the contour overlap.¹⁰ In addition, the Utilities Telecom Council (UTC), which is the Power Coordinator and whose concurrence is required for new operations on frequency pair 451/456.0500 MHz if the proposed interference contour overlaps an existing service contour, also objects to the proposed operations on that channel.¹¹

Consequently, Diverse requests a waiver of section 90.187(d)(1) to permit an interference contour overlapping Upson County EMC's service contour, and a waiver of section 90.187(d)(3) to permit a service contour that is completely enveloped by Upson County EMC's interference contour, without Upson County EMC's written consent.

Discussion. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or that, 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.¹² We conclude that Diverse has not demonstrated that a waiver is warranted.

The purpose of the requirement in section 90.187(d)(1) to obtain written consent from an incumbent whose service contour would be overlapped by the centralized trunked applicant's interference contour is to ensure that trunked systems operating in a shared environment have no detrimental impact on the operation of existing systems.¹³ Both Upson County EMC and UTC assert that the proposed operations on frequency pair 451/456.0500 MHz could have a detrimental impact on the existing system, and we share that concern.

The record before us does not detail any other reasonable alternative options that were investigated that could have been utilized to ameliorate the contour overlap of the existing service contour for Upson County EMC from the proposed facilities. Diverse states only that it seeks a waiver "[d]ue to

⁷ Diverse Power Inc., *About Diverse Power*, <http://www.diversepower.com/about-us/about-diverse-power/> (last viewed June 7, 2016).

⁸ See Waiver Request at 2-3.

⁹ See Supplemented Waiver Request at 3-5.

¹⁰ *Id.* at 23.

¹¹ See Objection to 450.050 MHz location 3 ("UTC feels that interference will be caused to Up[s]on County EMC, call sign WNAP458 that the proposed user Diverse Power Inc., overlaps their 21/39 dbu contour").

¹² See 47 CFR § 1.925(b)(3).

¹³ *Ralph A. Haller*, Letter Order, 23 FCC Rcd 4714, 4714 (WTB/PSHSB 2008).

the crowded spectrum in and near the Atlanta metro area.”¹⁴ There is no indication, for example, that Diverse considered other potential transmitter sites, or reducing the transmitter power or utilizing a directional antenna, to eliminate the contour overlap.

Conclusion. Diverse has not demonstrated that the underlying purpose of section 90.187(d)(1) would not be served or would be frustrated by application to the present case, that unique or unusual factual circumstances make application of the rule inequitable, unduly burdensome, or contrary to the public interest, or leave Diverse with no reasonable alternative. We therefore deny the request for waiver of section 90.187(d)(1). Given this decision, we need not address the request for waiver of section 90.187(d)(3).¹⁵ The above-referenced application will be denied with respect to the proposed operations on frequency pair 451/456.0500 MHz at locations 3, 4, and 7, but will otherwise be processed.

Accordingly, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission’s Rules, 47 CFR § 1.925, the request for waiver of section 90.187 filed by Diverse Power Inc. in association with application FCC File No. 0006948533 IS DENIED, and the application SHALL BE PROCESSED in accordance with this action and the Commission’s rules.

This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission’s rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

cc: Upson County EMC
P.O. Box 31
Thomaston, GA 30286
Attn: Radio Manager

¹⁴ See Waiver Request at 1.

¹⁵ We note that when the Commission adopted the reverse contour requirement, it contemplated that applicants with legitimate reasons for seeking authorization for service contours overlapped by incumbents’ interference contours could seek case-by-case waivers. *Part 90 Fifth Report and Order*, 28 FCC Rcd at 5928, para. 11.