

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

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

ORDER

Adopted: October 2, 2017

Released: October 2, 2017

By the Acting 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) requests a waiver of Section 90.179(a) of the Commission's rules to share use of the 800 MHz Michigan Public Safety Communications System (MPSCS) with critical infrastructure (CI) provider, Wolverine Power Supply Cooperative, Inc. and its cooperative members: Great Lakes Electric Cooperative; Home Works Tri-County Electric Cooperative; Presque Isle Electric & Gas Co-op; and Midwest Energy Cooperative (collectively the Wolverine Group). Based on the record, we grant Michigan's request subject to certain conditions.

II. BACKGROUND.

2. Section 90.179 of the Commission's rules authorizes 800 MHz licensees such as Michigan to enter into non-profit, cost sharing agreements with other entities; however, entities entering into such agreements must themselves be eligible to be licensed for public safety frequencies. Because the Wolverine Group members are not eligible for licensing on public safety spectrum, a waiver of Section 90.179(a) is required.

3. The Division previously granted Michigan waivers of Section 90.179(a) to allow CI providers to share the MPSCS's 800 MHz frequencies to achieve enhanced coverage and capacity as well as interoperability with CI providers. For example, the Division approved Michigan's sharing

1 47 CFR § 90.179(a).

2 See Request for Waiver of Rule Section 90.179 for Michigan's Public Safety Communications System (August 12, 2016) (Wolverine Waiver Request); Request for Waiver of Rule Section 90.179 for Michigan's Public Safety Communications System (August 2, 2016) (GLE Waiver); Request for Waiver of Rule Section 90.179 for Michigan's Public Safety Communications System (August 2, 2016) (HWTC Waiver); Request for Waiver of Rule Section 90.179 for Michigan's Public Safety Communications System (August 2, 2016) (PIE&G Waiver); Request for Waiver of Rule Section 90.179 for Michigan's Public Safety Communications System (December 16, 2016) (Midwest Waiver).

3 47 CFR § 90.179(a).

4 We note that MPSCS currently utilizes both 800 MHz and 700 MHz narrowband frequencies. Michigan states that the Wolverine Group will be restricted from using 700 MHz frequencies on the MPSCS. See Wolverine Waiver Request at 3; GLE Waiver at 3; HWTC Waiver at 3; PIE&G Waiver at 3; Midwest Waiver Request at 3. For a list of call signs associated with this waiver request see Appendix A infra.

agreements with Detroit Edison (DE) and ITC Transmission (ITC) for public safety use of the MPSCS network.⁵ In 2015, the Division granted waiver requests to permit Michigan to share the MPSCS with Cherryland Electric Cooperative (CEC),⁶ a Wolverine cooperative member.⁷ More recently, we granted Michigan's request to share the MPSCS with DTE Energy Company (DTE).⁸

III. DISCUSSION.

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (1) the underlying purpose of the rule(s) would not be served or would be frustrated by the application to the present case, and that a grant of the waiver would serve the public interest; or (2) 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.⁹

5. Here, we find that Michigan has shown good cause for a waiver. Consistent with Michigan's previous waiver requests, Michigan demonstrates that it has adequate spectrum to accommodate the planned sharing of its 800 MHz MPSCS network with the Wolverine group.¹⁰ Michigan also demonstrates that the Wolverine group will fund construction of additional infrastructure using 800 MHz Business/Industrial Land Transportation Category frequencies to mitigate its impact on the MPSCS network.¹¹ The shared use will improve the ability of public safety and the Wolverine group to communicate with one another and coordinate power restoration in times of emergency.¹² Additionally, Michigan shows that the sharing arrangement will be on a cost-shared, non-profit basis, thereby conforming to the Section 90.179 provisions. Michigan also demonstrates that it will retain control over the system and outlines the conditions under which the Wolverine group may use subscriber units on the system. Thus, based on the record before us and our previous orders, we find that a grant of the waiver would not undermine or frustrate the purpose of Section 90.179(a) and that grant of the waiver serves the public interest.¹³

IV. ORDERING CLAUSES.

6. Accordingly, IT IS ORDERED, pursuant to §§ 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 CFR §§ 1.925 and 90.179(a), that the Waiver Requests submitted by the State of Michigan IS GRANTED.

⁵ *State of Michigan, et al.*, Order, 27 FCC Rcd 214, 218 para. 11 (PSHSB 2012) (*Michigan Order*).

⁶ *State of Michigan*, Order, 30 FCC Rcd 10054 (PSHSB 2015).

⁷ See Wolverine Waiver Request at 1.

⁸ *State of Michigan*, Order, 32 FCC Rcd 4133 (PSHSB 2017).

⁹ 47 CFR § 1.925(b)(3)(i)-(ii).

¹⁰ See Wolverine Waiver Request at 2-3; GLE Waiver at 2-3; HWTC Waiver at 2-3; PIE&G Waiver at 2-3; Midwest Waiver Request at 2-3.

¹¹ See Wolverine Waiver Request at 2-3; GLE Waiver at 2-3; HWTC Waiver at 2-3; PIE&G Waiver at 2-3; Midwest Waiver Request at 2-3. With regard to the B/ILT channels, Michigan clarifies that the Wolverine Group will share its B/ILT frequencies with Michigan on a cost-shared, non-profit basis and that "[t]his arrangement will be documented in a written agreement between the parties pursuant to 90.179 (d)." See Letter from Bradley Stoddard, Director, DTMB, MPSCS to FCC (dated June 28, 2017) citing 47 CFR § 90.179(d). Michigan notes that each party will maintain and administer the FCC licenses for the spectrum in which they are eligible. *Id.* at 1. Appendix A represents a list of call signs subject to this waiver.

¹² See Wolverine Waiver Request at 2-3; GLE Waiver at 2-3; HWTC Waiver at 2-3; PIE&G Waiver at 2-3; Midwest Waiver Request at 2-3.

¹³ We condition this decision on requiring separate waivers for any future arrangements that Michigan contemplates for sharing its system with CI providers. See *Michigan Order*, 27 FCC Rcd at 218, para. 11.

7. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

Call Sign
WPIH507
WQSX386
WPDW475, WQTD462
WPAT838
WPIH506
WPIH505
WPNT221
WPNT222
WQSX361
WQSX360
WQWH349, WPTZ773
WPNT223
WPNT224
WPNT226
WPNT227
WQSX353
WQSX884
WPNT228
WPNT229
WPNT230
WPNT239
WPNT239
KNNN308
KNNN308
WPNT240
WPPB735
WPMU266
WQTD441, WPPB730
WPMU263
WPMU265
WPMU265
WPMU258
WPMU254, WQTD401
WPNT244
WPNT245
WPNT246
WPMU253
WPMT944
WPMT927, WQTD406
WPMT917
WPYJ552
WPMT909

WPMT908
WPMT907, WQTG752
WPIH518
WPMT902
WQEB460
WPQD482
WPQD541
WPQD546
WPQD548
WPQD549
WPQD557
WPQD340
WPQD553
WPQI447
WPQD341
WPQD358, WQYB287
WPQD347, WQYB285
WPQD346, WQYB286
WPQD342
WPQD345
WPQD362
WPQD368
WPQD376
WPQD371
WPQD370
WPQD381
WPQD372
WPQD373
WPQD379
WPQD378
WPQD377
WPQD375