**Before the**

Federal Communications Commission

Washington, D.C. 20554

|  |  |  |
| --- | --- | --- |
| In the Matter of  Commonwealth of Pennsylvania and First Energy Corp. Request for Amendment of Waiver | **)**  **)**  **)**  **)** | PS Docket No. 19-255 |

Order

**Adopted: March 20, 2020 Released: March 20, 2020**

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

# Introduction

1. In this *Order*, we address a petition for waiver of the Commission’s rules, jointly filed by the Commonwealth of Pennsylvania (Pennsylvania) and FirstEnergy Corp. (FirstEnergy) (together, Petitioners).[[1]](#footnote-3) In 1999, the Wireless Telecommunications Bureau (WTB) granted a waiver of section 90.179 of the Commission’s rules allowing Pennsylvania and First Energy’s predecessor to jointly operate a statewide 800 MHz Public Safety/Power Radio Service system on a non-profit, cost shared basis.[[2]](#footnote-4) In the instant request, Petitioners ask the Commission to interpret the *1999 Waiver Order* to allow Petitioners to add VHF channels to the joint system.[[3]](#footnote-5) In the alternative, Petitioners request that the 1999 waiver be amended or that a new waiver be granted to permit adding the VHF channels.[[4]](#footnote-6) Based on the record in this proceeding, and for the reasons discussed below, we grant a new waiver allowing addition of VHF channels to Petitioners’ statewide system.

# background

1. The *1999 Waiver Order* granted Pennsylvania and GPU Energy—a predecessor in interest to FirstEnergy Corp., a waiver of section 90.179 to construct and operate a shared network on 800 MHz Public Safety and Industrial/Land Transportation (I/LT) frequencies to be used by Public Safety and Power Radio eligibles on a non-profit, cost-shared basis.[[5]](#footnote-7) Petitioners claim that the statewide system has now reached the end of its lifecycle and is being upgraded, at least in part, to Project 25 Phase II technology.[[6]](#footnote-8) As part of the upgrade, Petitioners propose to add 422 VHF channels to the system to increase coverage and replace legacy 800 MHz facilities in certain areas.[[7]](#footnote-9) Petitioners state that the legacy system, with pole-mounted antennas, “do[es] not have equipment shelters, adequate backup power, or robust backhaul.”[[8]](#footnote-10) Petitioners also submit that upgrading the legacy system without using the requested VHF channels “would impose overwhelming financial and logistics burdens.”[[9]](#footnote-11)
2. In their March 12, 2019 filing, Petitioners ask the Commission to interpret the *1999 Waiver Order* to allow them to add VHF channels to their system and to use the channels on the same shared basis as the system’s 800 MHz channels.[[10]](#footnote-12) Alternatively, Petitioners request that the Commission allow incorporation of VHF channels into the shared system either by amending the 1999 waiver[[11]](#footnote-13) or by granting a new waiver.[[12]](#footnote-14)
3. On November 1, 2019, the Public Safety and Homeland Security Bureau (Bureau) placed Petitioners’ proposal, as supplemented, on public notice.[[13]](#footnote-15) The Bureau received comments from the State of Maryland Department of Information Technology (Maryland) and the Commonwealth of Virginia Department of State Police (Virginia),[[14]](#footnote-16) and Pennsylvania and First Energy filed reply comments.[[15]](#footnote-17) Maryland generally supports Petitioners’ request, as does Virginia, with some qualifications. Maryland submits that “a plain reading of the 1999 waiver supports the use of both [800 MHz and VHF] frequency bands in a shared land mobile radio communications system.”[[16]](#footnote-18) Virginia asserts that the Commission’s rules “make no provision for amending previously granted waivers”[[17]](#footnote-19) and asks that any waiver granted be limited to operating within the territorial limits of Pennsylvania, since FirstEnergy operates in multiple states.[[18]](#footnote-20) In its reply, FirstEnergy states that it does not object to Virginia’s conditions,[[19]](#footnote-21) and Pennsylvania clarifies that Petitioners only seek to “share facilities serving Pennsylvania.”[[20]](#footnote-22)

# discussion

1. Petitioners propose to add VHF channels to the statewide system as follows: (1) Pennsylvania will contribute 301 Part 90 Public Safety channels[[21]](#footnote-23); and (2) FirstEnergy will contribute 83 Part 90 Industrial/Business channels and 38 Part 22 VHF channels. [[22]](#footnote-24) We address these channel categories in turn.

## Pennsylvania Public Safety Channels

1. We grant Petitioners’ request for a waiver of Section 90.179 with respect to the use of Pennsylvania’s VHF Public Safety pool channels. As a threshold matter, we decline Petitioners’ request to interpret the *1999 Waiver Order* to allow shared use of VHF channels. The initiating waiver request that led to the 1999 order was limited to 800 MHz channels and did not seek use of VHF channels or channels in any other band. Had WTB intended to include other spectrum bands besides 800 MHz in the *1999 Waiver Order*, it would have explicitly done so. We also do not agree with Maryland that the order can be assumed to have authorized use of VHF channels because it did not explicitly exclude them.[[23]](#footnote-25) Such an interpretation is overbroad in that it would potentially allow Petitioners to use any frequency suitable for land mobile use, independent of the effect on incumbent licensees, without notice to the Commission or other stakeholders.
2. While we do not adopt Petitioners’ interpretation of the *1999 Waiver Order*, we conclude that their alternative waiver request has merit. 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;[[24]](#footnote-26) 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.[[25]](#footnote-27)
3. Section 90.179(a) provides that “persons may share a radio station only on frequencies for which they would be eligible for a separate authorization.”[[26]](#footnote-28) This limitation was imposed to ensure adequate spectrum is available for each service category (e.g., Public Safety and Industrial/Business) and to avoid incompatible services interfering with one another.[[27]](#footnote-29) Petitioners assert that granting a waiver to allow shared use of VHF channels in their combined system will serve a multitude of federal, state, and local agencies, and that giving local entities currently using VHF facilities access to a shared network with VHF channels promotes interoperability and would be less costly than constructing 800 MHz facilities. [[28]](#footnote-30)
4. We conclude that Petitioners have demonstrated the need to add VHF public safety channels to the system on the same shared-use basis that applies to its 800 MHz channels. Petitioners note that due to the superior propagation characteristics of VHF transmissions, VHF channels provide optimum coverage in Pennsylvania’s rugged terrain and densely forested areas.[[29]](#footnote-31) They point to a recent incident – the largest manhunt in Pennsylvania’s history – in which the existing 800 MHz system did not provide full coverage in these areas.[[30]](#footnote-32) Petitioners state that VHF was needed during the manhunt to “adequately cover the area” and that VHF sites are presently being incorporated to “increase coverage outside . . . of more highly populated areas.”[[31]](#footnote-33) Petitioners’ showing that Pennsylvania’s 800 MHz system has provided insufficient coverage in rural, rugged, and forested areas demonstrates that strict application of section 90.179(a) in this case would be unduly burdensome and costly. Given the documented coverage problems inherent in Petitioners using an 800 MHz-only system in rural and rugged environments, and in light of the fact that there appear to be no reasonable alternatives available to Petitioners to meet the coverage shortfall, we find the public interest dictates granting the waiver.

## FirstEnergy Industrial/Business and Part 22 Channels

1. *Part 90 Industrial/Business Channels*. Section 90.179(h) of the Commission’s rules provides that “licensees authorized to operate radio systems on Industrial/Business Pool frequencies designated in § 90.35 may share their facilities with Public Safety Pool entities designated in § 90.20 and with federal agencies on a non-profit cost-shared basis.” Therefore, section 90.179 poses no impediment to FirstEnergy sharing its Industrial/Business 800 MHz and VHF frequencies with Pennsylvania and with federal agencies.
2. *Part 22 Channels*. FirstEnergy proposes to contribute 38 Part 22 VHF channels to the shared system.[[32]](#footnote-34) In its reply comments, FirstEnergy notes that no waiver is required for shared use of Part 22 channels.[[33]](#footnote-35) We agree. In 2017, the Commission eliminated Section 20.9 of the rules, which required licensees on channels allocated for commercial use to seek waivers or submit certifications to the Commission in order to provide non-commercial services.[[34]](#footnote-36) The Commission stated that the “elimination of Section 20.9 will help bring beneficial services to businesses, state and local governments, and the public safety community, while reducing the administrative burdens and processing delays that certain providers of these services currently face.”[[35]](#footnote-37) As a result of this rule change, Petitioners’ proposed non-commercial shared use of Part 22 channels as part of the Pennsylvania/FirstEnergy system is permissible without a waiver.[[36]](#footnote-38)

## Applicability of the Waiver to Future Facilities and Channels.

1. Petitioners ask that any waiver relief not only apply to the specific VHF channels identified in the Petition but also to any future stations that may be added later, “to avoid the unnecessarily burdensome administrative task of refiling a waiver request each time a site is constructed or modified.”[[37]](#footnote-39) We have declined to grant such open-ended relief in similar waiver cases,[[38]](#footnote-40) and we decline to do so here, as it would foreclose the Commission from being able to assess the impact of future expansion of Petitioners’ system on the supply of frequencies available for other users in the area, especially public safety users. However, should Petitioners apply for additional VHF channels or facilities to expand their system in the future, they may request amendment of this waiver to include such channels or facilities, subject to an appropriate showing that the Commission’s waiver criteria are met.

# Ordering clauses

1. Accordingly, IT IS ORDERED, that pursuant to sections 4(i), 303(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and 303(r), and sections 1.3, 1.925, 90.179(a), 1.3, and 1.925, of the Commission’s rules, 47 CFR §§ 1.3, 1.925, and 90.179(a), the waiver request jointly filed by the Commonwealth of Pennsylvania and FirstEnergy Corporation, as supplemented, IS GRANTED IN PART to the extent that the Commonwealth of Pennsylvania and FirstEnergy Corporation may share the frequencies currently licensed to the call signs listed in the Appendix.
2. IT IS FURTHER ORDERED that the portion of the waiver request jointly filed by the Commonwealth of Pennsylvania and FirstEnergy Corporation, as supplemented, that seeks a waiver to share Part 22 frequencies is DISMISSED AS MOOT.
3. IT IS FURTHER ORDERED that, in the event of a use conflict between a public safety user of the shared system and any other user, priority shall be afforded to the public safety user.
4. 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

Chief, Policy and Licensing Division

Public Safety and Homeland Security Bureau

**Appendix A**

**Part 90 VHF Public Safety Callsigns and Frequencies**

List of approved Commonwealth of Pennsylvania part 90 VHF public safety pool call signs and frequencies approved for sharing with FirstEnergy by the Bureau by this *Order*:

| **Call Sign** | **Frequency (MHz)** |
| --- | --- |
| WQUZ231 | 159.21 |
| WQVL664 | 154.935 |
| WQVL664 | 154.92 |
| WQUX679 | 151.3475 |
| WQUX679 | 151.1525 |
| WQUX679 | 151.295 |
| WQUX679 | 154.95 |
| WQUX679 | 156.0075 |
| WQUX679 | 156.15 |
| WQUE282 | 158.73 |
| WQUE282 | 159.1275 |
| WQUE282 | 159.375 |
| WQUE282 | 154.7175 |
| WQUE282 | 156.0375 |
| WQUE282 | 156.0825 |
| WQUC589 | 151.235 |
| WQUC589 | 159.33 |
| WQUC589 | 151.475 |
| WQUC589 | 153.95 |
| WQUC589 | 155.985 |
| WQUC589 | 156.03 |
| WQUX677 | 151.115 |
| WQUX677 | 151.22 |
| WQUX677 | 151.415 |
| WQUX677 | 154.95 |
| WQUX677 | 155.91 |
| WQUX677 | 156.0375 |
| WQVB532 | 151.4675 |
| WQVB532 | 155.5275 |
| WQVB532 | 156.1275 |
| WQVB532 | 153.7475 |
| WQVB532 | 153.8975 |
| WQVB532 | 153.9575 |
| WQVV847 | 155.73 |
| WQVV847 | 159.1425 |
| WQVV847 | 159.3225 |
| WQVV847 | 153.8075 |
| WQVV847 | 153.8825 |
| WQVV847 | 154.0025 |
| WQVF450 | 151.01 |
| WQVF450 | 154.0625 |
| WQVF450 | 159.1275 |
| WQVF450 | 155.5275 |
| WQVF450 | 155.6325 |
| WQVF450 | 156.045 |
| WQLT327 | 151.175 |
| WQLT327 | 151.295 |
| WQLT327 | 151.385 |
| WQLT327 | 151.4 |
| WQLT327 | 154.905 |
| WQLT327 | 154.92 |
| WQLT327 | 155.505 |
| WQLT327 | 155.58 |
| WQLT327 | 154.755 |
| WQUY910 | 159.1875 |
| WQUY910 | 154.83 |
| WQUY910 | 155.85 |
| WQVR897 | 151.1975 |
| WQVR897 | 155.3025 |
| WQVR897 | 155.5425 |
| WQVR897 | 153.7475 |
| WQVR897 | 153.8375 |
| WQVR897 | 154.0175 |
| WQVT983 | 151.0325 |
| WQVT983 | 159.405 |
| WQVT983 | 154.71 |
| WQVT983 | 155.91 |
| WQUE287 | 158.8125 |
| WQUE287 | 159.105 |
| WQUE287 | 159.24 |
| WQUE287 | 153.9425 |
| WQUE287 | 154.65 |
| WQUE287 | 156.0675 |
| WQUX222 | 155.67 |
| WQUX222 | 154.68 |
| WQUX222 | 154.8525 |
| WQUX222 | 159.3 |
| WQUX222 | 159.4125 |
| WQUX222 | 158.985 |
| WQVG226 | 155.58 |
| WQVG226 | 154.905 |
| WQVG226 | 151.385 |
| WQVG226 | 159.4275 |
| WQVG226 | 159.3525 |
| WQVG226 | 159.255 |
| WQUV758 | 151.2275 |
| WQUV758 | 155.52 |
| WQUV758 | 156.21 |
| WQUV758 | 158.9025 |
| WQUV758 | 158.9625 |
| WQUV758 | 159.03 |
| WQUY467 | 154.1675 |
| WQUY467 | 154.905 |
| WQUY467 | 155.46 |
| WQUY467 | 150.805 |
| WQUY467 | 159.2025 |
| WQUY467 | 159.3975 |
| WQUY816 | 154.13 |
| WQUY816 | 154.4225 |
| WQUY816 | 154.9725 |
| WQUY816 | 158.7825 |
| WQUY816 | 151.025 |
| WQUY816 | 151.13 |
| WQRJ856 | 154.665 |
| WQRJ856 | 154.755 |
| WQRJ856 | 154.92 |
| WQRJ856 | 155.445 |
| WQRJ856 | 158.7525 |
| WQRJ856 | 158.91 |
| WQRJ856 | 158.955 |
| WQRJ856 | 159.1275 |
| WQWG501 | 158.7975 |
| WQWG501 | 159.2175 |
| WQWG501 | 159.2325 |
| WQWG501 | 151.2425 |
| WQWG501 | 154.4375 |
| WQWG501 | 156.0375 |
| WQVL665 | 154.9425 |
| WQVL665 | 155.4675 |
| WQVL665 | 155.505 |
| WQVL665 | 159.345 |
| WQVL665 | 151.4 |
| WQVL665 | 159.42 |
| WQWE404 | 151.085 |
| WQWE404 | 151.4825 |
| WQWE404 | 154.1375 |
| WQWE404 | 155.85 |
| WQWE404 | 155.985 |
| WQWE404 | 158.985 |
| WQVA509 | 151.385 |
| WQVA509 | 151.1825 |
| WQVA509 | 155.2425 |
| WQVA509 | 158.865 |
| WQVA509 | 158.9475 |
| WQVA509 | 159.0225 |
| WQUX676 | 158.8425 |
| WQUX676 | 159.09 |
| WQUX676 | 159.1875 |
| WQUX676 | 153.8 |
| WQUX676 | 154.89 |
| WQUX676 | 154.95 |
| WQVG945 | 154.4075 |
| WQVG945 | 159.27 |
| WQVG945 | 158.7825 |
| WQVG945 | 158.85 |
| WQVQ416 | 155.55 |
| WQVQ416 | 156.1125 |
| WQVQ416 | 155.445 |
| WQVQ416 | 153.74 |
| WQVQ416 | 151.16 |
| WQVQ416 | 153.92 |
| WRCM947 | 151.1675 |
| WRCM947 | 151.3925 |
| WRCM947 | 151.445 |
| WRCM947 | 154.01 |
| WRCM947 | 159.42 |
| WRCM947 | 155.9775 |
| WQVR394 | 159.465 |
| WQVR394 | 159.1275 |
| WQVR394 | 159.315 |
| WQVR394 | 154.01 |
| WQVR394 | 154.77 |
| WQVR394 | 154.83 |
| WQUU666 | 151.205 |
| WQUU666 | 151.34 |
| WQUU666 | 151.4675 |
| WQUU666 | 153.95 |
| WQUU666 | 155.85 |
| WQUU666 | 158.865 |
| WQUU666 | 154.2575 |
| WQUU666 | 154.8525 |
| WQUU666 | 155.1375 |
| WQUU666 | 158.9175 |
| WQUU666 | 159.045 |
| WQUU666 | 156.165 |
| WQVR895 | 158.76 |
| WQVR895 | 159.1125 |
| WQVR895 | 159.39 |
| WQLN571 | 158.8275 |
| WQVR895 | 154.8375 |
| WQVR895 | 155.9925 |
| WQVR895 | 151.3475 |
| WQVR895 | 151.295 |
| WQUY802 | 151.445 |
| WQUY802 | 151.2725 |
| WQUY802 | 151.4 |
| WQUY802 | 154.65 |
| WQUY802 | 155.97 |
| WQUY802 | 156.0525 |
| WQWL877 | 159.09 |
| WQWL877 | 159.3375 |
| WQWL877 | 159.3825 |
| WQWL877 | 153.755 |
| WQWL877 | 154.01 |
| WQWL877 | 155.985 |
| WQWX943 | 151.3025 |
| WQWX943 | 151.3175 |
| WQWX943 | 151.3475 |
| WQWX943 | 151.415 |
| WQWX943 | 154.83 |
| WQWX943 | 158.91 |
| WQWX943 | 159 |
| WQWA746 | 151.415 |
| WQWA746 | 159.3675 |
| WQWA746 | 159.12 |
| WQWA746 | 154.89 |
| WQWA746 | 155.97 |
| WQWA746 | 155.58 |
| WQWA746 | 155.46 |
| WQVG590 | 151.145 |
| WQVG590 | 151.25 |
| WQVG590 | 151.01 |
| WQVG590 | 153.995 |
| WQVG590 | 155.3175 |
| WQVG590 | 158.8875 |
| WQVL662 | 154.205 |
| WQVL662 | 154.325 |
| WQVL662 | 154.935 |
| WQVL662 | 156.0375 |
| WQVL662 | 156.15 |
| WQVL662 | 158.97 |
| WQUL240 | 151.3475 |
| WQUL240 | 159.12 |
| WQUL240 | 159.39 |
| WQUL240 | 153.74 |
| WQUL240 | 153.875 |
| WQUL240 | 156 |
| WQUW994 | 153.8825 |
| WQUW994 | 156.0525 |
| WQUW994 | 159.0525 |
| WQUZ230 | 151.01 |
| WQUZ230 | 151.31 |
| WQUZ230 | 153.8975 |
| WQUZ230 | 156.075 |
| WQUZ230 | 156.2025 |
| WQUX675 | 151.13 |
| WQUX675 | 151.28 |
| WQUX675 | 151.4825 |
| WQUX675 | 153.935 |
| WQUX675 | 156.015 |
| WQUX675 | 156.06 |
| WQUE286 | 151.1225 |
| WQUE286 | 151.2575 |
| WQUE286 | 154.1975 |
| WQUE286 | 156.0225 |
| WQUE286 | 156.1575 |
| WQUE286 | 159.03 |
| WQUG547 | 154.9425 |
| WQUG547 | 156.1125 |
| WQUG547 | 156.225 |
| WQUG547 | 158.865 |
| WQUG547 | 158.91 |
| WQUG547 | 159.0375 |
| WQVB974 | 151.0625 |
| WQVB974 | 151.325 |
| WQVB974 | 151.4975 |
| WQVB974 | 153.8075 |
| WQVB974 | 153.9125 |
| WQVB974 | 154.8975 |
| WQUG532 | 151.265 |
| WQUG532 | 154.68 |
| WQUG532 | 154.9425 |
| WQUG532 | 156.03 |
| WQUG532 | 158.955 |
| WQUG532 | 159.045 |
| WQVV846 | 151.0625 |
| WQVV846 | 154.9425 |
| WQVV846 | 155.0775 |
| WQVV846 | 155.9175 |
| WQVV846 | 159.0525 |
| WQVV846 | 159.2625 |
| WQVG946 | 151.3175 |
| WQVG946 | 154.74 |
| WQVG946 | 154.935 |
| WQVG946 | 156.0675 |
| WQVG946 | 156.0825 |
| WQVG946 | 156.15 |
| WQUI446 | 155.19 |
| WQUI446 | 155.46 |
| WQUI446 | 155.685 |
| WQUI446 | 153.89 |
| WQUI446 | 153.98 |
| WQUI446 | 159 |
| WQWD725 | 154.7925 |
| WQWD725 | 154.9425 |
| WQWD725 | 156.1725 |
| WQWD725 | 151.3475 |
| WQWD725 | 158.7975 |
| WQWD725 | 158.8575 |
| WQLS309 | 155.67 |
| WQLS309 | 155.505 |
| WQLS309 | 154.755 |
| WQLS309 | 159.33 |
| WQLS309 | 159.0075 |
| WQLS309 | 158.925 |
| WRCE588 | 151.2575 |
| WRCE588 | 151.2725 |
| WRCE588 | 151.2125 |
| WRCE588 | 154.95 |
| WRCE588 | 154.0025 |
| WRCE588 | 158.895 |

**Appendix B**

List of approved FirstEnergy part 90 and part 22 VHF public safety pool call signs and frequencies approved for sharing with the Commonwealth of Pennsylvania by the Bureau by this *Order*. Callsigns marked with asterisks (\*) are part 22 callsigns and corresponding part 22 frequencies

| **Call Sign** | **Frequency (MHz)** |
| --- | --- |
| WRBY876 | 152.8925 |
| WRBY876 | 159.9450 |
| WRBY876 | 153.7250 |
| WRBY876 | 158.1900 |
| WRBY876 | 153.1250 |
| WRBY876 | 158.1450 |
| WRBY876 | 153.7250 |
| WRBY876 | 159.9600 |
| WRBN333 | 153.3875 |
| WRBN333 | 153.1025 |
| WRBN333 | 159.7875 |
| WRBN333 | 157.7175 |
| WRBN333 | 153.4550 |
| WRBN333 | 153.5225 |
| WRBN333 | 153.0800 |
| WRBN333 | 157.6350 |
| WRBN333 | 157.7175 |
| WRBN333 | 159.9450 |
| WRBN333 | 153.2525 |
| WRBN333 | 153.1850 |
| WRBN333 | 159.7725 |
| WRBN333 | 159.8625 |
| WRBN333 | 153.6125 |
| WRBN333 | 153.4475 |
| WRBN333 | 159.7275 |
| WRBN333 | 159.9075 |
| WRCB536 | 153.3725 |
| WRCB536 | 152.4125 |
| WRCB536 | 160.0050 |
| WRCB536 | 159.8250 |
| WRCB536 | 153.1025 |
| WRCB536 | 153.4550 |
| WRCB536 | 159.9825 |
| WRCB536 | 159.7800 |
| WRCB536 | 153.3050 |
| WRCB536 | 153.1925 |
| WRCB536 | 160.1925 |
| WRCB536 | 159.9825 |
| WRCB536 | 153.2675 |
| WRCB536 | 153.1475 |
| WRCB536 | 158.3250 |
| WRCB536 | 159.7725 |
| WRCB536 | 153.1325 |
| WRCB536 | 153.5900 |
| WRCB536 | 158.1750 |
| WRCB536 | 158.2575 |
| WRBT765 | 151.5425 |
| WRBT765 | 153.1325 |
| WRBT765 | 158.2575 |
| WRBT765 | 158.1825 |
| WRBT765 | 153.3575 |
| WRBT765 | 153.1775 |
| WRBT765 | 160.0200 |
| WRBT765 | 158.3250 |
| WRBT765 | 153.5825 |
| WRBT765 | 153.7250 |
| WRBT765 | 158.1375 |
| WRBT765 | 158.2125 |
| WRBT765 | 153.4325 |
| WRBT765 | 153.5825 |
| WRBT765 | 158.2575 |
| WRBT765 | 158.3250 |
| WRBT765 | 153.3650 |
| WRBT765 | 152.2925 |
| WRBT765 | 160.0200 |
| WRBT765 | 158.2875 |
| WRBP862 | 153.1850 |
| WRBP862 | 153.3200 |
| WRBP862 | 158.3475 |
| WRBP862 | 160.1775 |
| WRBP862 | 153.1325 |
| WRBP862 | 153.5825 |
| WRBP862 | 153.6875 |
| WRBP862 | 158.1675 |
| WRBP862 | 159.6750 |
| WRBP862 | 159.8625 |
| WRBP862 | 153.2150 |
| WRBP862 | 153.1100 |
| WRBP862 | 158.3100 |
| WRBP862 | 159.6075 |
| WRBP862 | 153.0725 |
| WRBP862 | 153.4400 |
| WRBP862 | 159.8625 |
| WRBP862 | 159.7875 |
| \*WPVF282 | 152.6300 |
| \*WPVF282 | 157.8900 |
| \*WPVF288 | 152.0600 |
| \*WPVF288 | 158.5200 |
| \*WPVF296 | 152.7500 |
| \*WPVF296 | 158.0100 |
| \*WPVF289 | 152.1200 |
| \*WPVF289 | 158.5800 |
| \*WPVF297 | 152.7800 |
| \*WPVF297 | 158.0400 |
| \*WPVF301 | 152.0600 |
| \*WPVF301 | 158.5200 |
| \*WPVF303 | 152.1200 |
| \*WPVF303 | 158.5800 |
| \*WPVF313 | 152.7800 |
| \*WPVF313 | 158.0400 |
| \*WPZG551 | 152.0600 |
| \*WPZG551 | 158.5200 |
| \*WPVF349 | 152.7500 |
| \*WPVF349 | 158.0100 |
| \*WPVH206 | 152.0600 |
| \*WPVH206 | 158.5200 |
| \*WPVF365 | 152.7500 |
| \*WPVF365 | 158.0100 |
| \*WPVF387 | 152.0600 |
| \*WPVF387 | 158.5200 |
| \*WPVF397 | 152.7500 |
| \*WPVF397 | 158.0100 |

1. Petition of Commonwealth of Pennsylvania and FirstEnergy Corp. Request for Amendment of Waiver DA-1756, PS Docket No. 19-255, at 2 (filed Nov. 4. 2019) (Petition). [↑](#footnote-ref-3)
2. *Commonwealth of Pennsylvania and GPU Energy Request for Waiver of Section 90.179 of the Commission’s Rules*, Order, 14 FCC Rcd 14029, 14029, para. 1 (WTB 1999) (*1999 Waiver Order*) (granting waiver for 800 MHz shared use). [↑](#footnote-ref-4)
3. *See* Initial Channels Subject to Sharing Arrangement, PS Docket No. 19-255 (filed Nov. 4, 2019) (VHF List) (List of FirstEnergy and Commonwealth of Pennsylvania proposed shared callsigns and frequencies). [↑](#footnote-ref-5)
4. Supplement to Commonwealth of Pennsylvania and FirstEnergy Corp. Request for Clarification or Amendment of Waiver, PS Docket No. 19-255, at 2 (filed Nov. 4. 2019) (Supplement). As we noted in this proceeding’s opening public notice, Petitioners jointly submitted its materials to Public Safety and Homeland Security Bureau staff for consideration. *See* *Public Safety and Homeland Security Bureau Seeks Comment on Commonwealth of Pennsylvania and FirstEnergy Corp. Request for Clarification or, in the Alternative, Waiver to Share VHF Frequencies*, Public Notice, DA 19-1131, at 1 n.2 (PSHSB Nov. 1, 2019) (Public Notice). [↑](#footnote-ref-6)
5. *1999 Waiver*, 14 FCC Rcd at 14036, para. 15. [↑](#footnote-ref-7)
6. Pennsylvania Reply at 1. [↑](#footnote-ref-8)
7. *Id*.; FirstEnergy Reply at 1-2. [↑](#footnote-ref-9)
8. Supplement at 2. [↑](#footnote-ref-10)
9. *Id*. [↑](#footnote-ref-11)
10. Petitioners originally submitted their Petition and Supplement via emailed letters to the Public Safety and Homeland Security and Wireless Telecommunication Bureau staff. *See* Letter from Gregory E. Kunkle, Keller and Heckman LLP, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, and Lisa M. Fowlkes, Chief, Public Safety and Homeland Security Bureau (Mar. 12, 2019); Supplement to Commonwealth of Pennsylvania and FirstEnergy Corp. Request for Clarification or Amendment of Waiver (Aug. 19, 2019). Petitioners subsequently filed these documents electronically via ECFS in the instant docket on November 4, 2019. [↑](#footnote-ref-12)
11. Petition at 2. [↑](#footnote-ref-13)
12. *Id*. [↑](#footnote-ref-14)
13. Public Notice. [↑](#footnote-ref-15)
14. *See* Comments of State of Maryland Department of Information Technology (Maryland Comments), and the Commonwealth of Virginia Department of State Police (Virginia Comments). [↑](#footnote-ref-16)
15. *See* Reply Comments of FirstEnergy Corp. (FirstEnergy Reply), Commonwealth of Pennsylvania (Pennsylvania Reply). [↑](#footnote-ref-17)
16. Maryland Comments at 1. [↑](#footnote-ref-18)
17. Virginia Comments at 2. [↑](#footnote-ref-19)
18. *See* Virginia Comments at 2-4. Virginia notes that FirstEnergy Corp. has customers in “West Virginia, Maryland, and the District of Columbia, and facilities in Virginia.” Virginia Comments at 2. [↑](#footnote-ref-20)
19. *See* FirstEnergy Reply at 2-3. [↑](#footnote-ref-21)
20. Pennsylvania Reply at 2. [↑](#footnote-ref-22)
21. *See infra* Appx. A. The channels are licensed to Pennsylvania under 53 call signs. [↑](#footnote-ref-23)
22. *See infra* Appx. B. The channels are licensed to Fist Energy under 5 call signs [↑](#footnote-ref-24)
23. Maryland Comments at 1. [↑](#footnote-ref-25)
24. 47 CFR § 1.925(b)(3)(i). [↑](#footnote-ref-26)
25. 47 CFR § 1.925(b)(3)(ii). [↑](#footnote-ref-27)
26. 47 CFR § 90.179(a). [↑](#footnote-ref-28)
27. *See generally, e.g*., *Middle Tennessee Electric Membership Corp*., 34 FCC Rcd 2455, (PSHSB April 25, 2019), *citing*[*State of Ohio and FirstEnergy Corp., Order,* 31 FCC Rcd 8758 (PSHSB 2016*)*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2039521034&pubNum=0004493&originatingDoc=I730da5236afb11e9bc5d825c4b9add2e&refType=CA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)); [*State of Michigan, et al*, Order, 27 FCC Rcd 214 (PSHSB 2012)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026850982&pubNum=0004493&originatingDoc=I730da5236afb11e9bc5d825c4b9add2e&refType=CA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)); [*State of Ohio and Ohio Rural Electric Cooperatives, Inc.*, Order, 24 FCC Rcd 2289 (PSHSB 2009)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2018195527&pubNum=0004493&originatingDoc=I730da5236afb11e9bc5d825c4b9add2e&refType=CA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). [↑](#footnote-ref-29)
28. *See* Supplement at 3-4 (claiming the entities to be served are the Department of Agriculture, Department of Conservation & Natural Resources, Department of Corrections, Department of Environmental Protection, Department of General Services - Capitol Police, Department of Health, Department of Military & Veterans Affairs, Department of Transportation, Office of Attorney General, Office of Inspector General, Pennsylvania Board of Probation & Parole, Pennsylvania Emergency Management Agency, Pennsylvania Game Commission, Pennsylvania House of Representatives, Pennsylvania Office of Administrative Services, Pennsylvania Public Utility Commission, Pennsylvania Treasury Department, Pennsylvania Turnpike Commission, State System of Higher Education, Pennsylvania State Police, US DOJ-ATF, US DOJ-DEA, US DOJ-US Marshalls, US DOI-National Park Service, Warren County, Mifflin County, Montour County, Columbia County, FirstEnergy). [↑](#footnote-ref-30)
29. Supplement at 1. [↑](#footnote-ref-31)
30. *Id*. at 1-2. [↑](#footnote-ref-32)
31. *Id*. at 1, 3. [↑](#footnote-ref-33)
32. *See generally* VHF List (showing FirstEnergy Part 22 callsigns); Supplement at 2. [↑](#footnote-ref-34)
33. FirstEnergy Reply at 2-3 (“the Request applies only to Part 90 channels and no waiver is required for shared use of Part 22 channels.”). [↑](#footnote-ref-35)
34. *See Amendments to Harmonize and Streamline Part 20 of the Commission’s Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption*, Report and Order, 32 FCC Rcd 10731, 10738, para. 14 (2017). [↑](#footnote-ref-36)
35. *Id*. at 10739 para 16. [↑](#footnote-ref-37)
36. We remind Petitioners, however, that use of Part 22 channels must conform to the Part 22 technical rules. Should Petitioners wish to deviate from the Part 22 technical rules, they must first obtain a waiver. [↑](#footnote-ref-38)
37. Supplement at 5. [↑](#footnote-ref-39)
38. *See, e.g*., *American Electric Power Service Corporation*, 15 FCC Rcd 15553, 15557, paras. 10-12 (WTB 2000) (discussing [denying?] public safety pool licensees’ request to *inter alia* “add their frequencies to AEP’s [American Electric Power] system without further authorization.” *Id*. at 15557, para. 10.). [↑](#footnote-ref-40)