

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

In the Matter of
State of Michigan, Department of Technology,
Management and Budget
Request for Waiver of Section 90.179(a) of the
Commission's Rules

ORDER

Adopted: October 12, 2021

Released: October 12, 2021

By the 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 Consumer's Energy, an electric and gas utility provider that has a customer footprint across the lower peninsula of Michigan. As discussed below, we grant Michigan's request.

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 Consumer's Energy is not eligible for licensing on public safety spectrum, a waiver of Section 90.179(a) is required. We have previously granted Michigan several waivers of Section 90.179(a) to allow other CI providers to share the MPSCS's 800 MHz frequencies to achieve enhanced coverage, capacity, and interoperability. Because each waiver is based on the specific facts presented, we require each additional CI provider that seeks shared access to the MPSCS network to file a separate waiver request.

III. DISCUSSION.

3. 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

1 Letter from Brad A. Stoddard, Director, Office of Michigan's Public Safety Communications System to Public Safety and Homeland Security Bureau, Feb. 8, 2021 (Waiver Request).

2 47 CFR § 90.179(a).

3 Waiver Request at 1.

4 47 CFR § 90.179(a)

5 See State of Michigan, Order, 27 FCC Rcd 214 (PSHSB 2012); State of Michigan, Order, 30 FCC Rcd 10054 (PSHSB 2015); State of Michigan, Order, 32 FCC Rcd 4133 (PSHSB 2017); State of Michigan, Order, 32 FCC Rcd 7351 (PSHSB 2017).

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.⁶

4. 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 Consumer's Energy.⁷ Michigan also demonstrates that Consumer's Energy will fund construction of additional infrastructure using 800 MHz Business/Industrial Land Transportation Category frequencies to mitigate its impact on the MPSCS network.⁸ The shared use will improve the ability of public safety and Consumer's Energy to communicate with one another and coordinate power restoration in times of emergency.⁹ Additionally, Michigan shows that the sharing arrangement will be on a cost-shared, non-profit basis, thereby conforming to the section 90.179 provisions.¹⁰ Michigan also demonstrates that it will retain control over the system.¹¹ 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.

IV. ORDERING CLAUSE.

5. 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 CFR sections 1.925 and 90.179(a), that the Waiver Request submitted by the State of Michigan on February 8, 2021 IS GRANTED.

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

⁶ 47 CFR §1.925; *See, e.g., Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (WAIT Radio); Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1157.

⁷ Waiver Request at 2.

⁸ *Id.* at 2.

⁹ *Id.* at 3. We note that MPSCS currently utilizes both 800 MHz and 700 MHz narrowband frequencies. Michigan states that Consumer's Energy will be restricted from using 700 MHz frequencies on the MPSCS. *Id.*

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.