

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

in remote areas outside the range of its fixed network across its 11-state service territory, and without conforming to the 113-kilometer distance separation specified in section 90.621(b).<sup>8</sup>

4. In its waiver request, AEP asserts that some of its most critical work, such as maintaining the transmission and distribution networks, depends on its private 800 MHz network.<sup>9</sup> While it has significantly invested in the network's deployment, AEP contends that it is not operationally, fiscally, or environmentally feasible to establish fixed facilities in more remote locations where its personnel must operate.<sup>10</sup> AEP argues that the areas without coverage are not frequently visited, yet it is vital for wireless communications to be reliable for the field crews working there due to the hazardous tasks performed and strenuous working conditions.<sup>11</sup> Therefore, AEP states it is critical for these field crew members to have the ability to communicate regardless of their location.<sup>12</sup> This need would be addressed by permitting AEP's personnel to speak directly to each other without having to pass through a repeater and, when required, to employ a temporary repeater with a short antenna affixed to the roof of a vehicle that would provide a range of no greater than six miles.<sup>13</sup> AEP explained that it considered alternative wireless options, but the alternatives were not viable.<sup>14</sup> Finally, AEP states that it understands that any use must occur on a secondary, non-interference basis and proposes a set of detailed conditions designed to ensure that its temporary operations do not cause interference to co-channel licensees.<sup>15</sup>

5. On November 21, 2023, the Commission released a Public Notice seeking comment on AEP's waiver request application.<sup>16</sup> Three parties submitted comments in this proceeding.<sup>17</sup> The Government Wireless Technology & Communications Association (GWTCA) filed in opposition to this waiver request, expressing concern with the lack of notice to affected parties, insufficient detail about how AEP would operate, and inadequate discussion of reasonable alternatives pursued.<sup>18</sup> The other two commenters filed to raise specific situational concerns pertaining to cities in Tennessee.<sup>19</sup>

### III. DISCUSSION

6. *Waiver Standard.* Pursuant to section 1.925 of the Commission's rules, to be granted a waiver, an applicant must show that either (i) "[t]he underlying purpose of the rule(s) would not be served

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<sup>8</sup> *Id.* at 1, 2; AEP Waiver Application, ULS File No. 0010577631.

<sup>9</sup> AEP Waiver Request at 1.

<sup>10</sup> *Id.* at 1.

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

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

<sup>13</sup> *Id.* at 1–2.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 2–4.

<sup>16</sup> *Wireless Telecommunications Bureau Seeks Comment on American Electric Power Service Corporation's Request for Waiver of Section 90.621(b)*, WT Docket No. 23-390, Public Notice, DA 23-1084, 2023 WL 8614340, at \*1 (WTB Nov. 21, 2023). On January 3, 2024, AEP filed a Motion for Extension of Time to extend the comment deadline by seven days for additional time to respond to GWTCA's opposition. Motion of American Electric Power Service Corporation for Extension of Time, WT Docket No. 23-390, at 1 (filed Jan. 3, 2024, amended Jan. 4, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1010358792919>. The Wireless Telecommunications Bureau granted AEP's Motion on January 5, 2024, extending the reply comment deadline by seven days to January 12, 2024. *Order Granting Extension of Time*, WT Docket No. 23-390, Order, DA 24-16, 2024 WL 123606, at \*1–2 (WTB Jan. 5, 2024).

<sup>17</sup> Government Wireless Technology & Communications Association Comments (GWTCA Comments); Patrick Rollins Comments; Allen Lark, City of Johnson City, TN Comments (Allen Lark Comments).

<sup>18</sup> GWTCA Comments at 2–4.

<sup>19</sup> Patrick Rollins Comments; Allen Lark Comments.

or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest;” or (ii) “[i]n view of unique and 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>20</sup> An applicant seeking waiver must meet a high bar and “must plead with particularity the facts and circumstances which warrant such action.”<sup>21</sup>

7. We find that AEP has demonstrated that a waiver is warranted because, in light of the unique and unusual factual circumstances of the instant case, application of the distance separation requirement in section 90.621(b) would be contrary to the public interest. Section 90.621(b) typically governs fixed facilities that are high power and on high sites, which are distinct from AEP’s proposed operations.<sup>22</sup> AEP indicates that it will operate at low power, specifically a maximum of 50 watts effective radiated power, and with an antenna height of no greater than five feet from the roof of a vehicle, which significantly limits the range and minimizes the potential for interference.<sup>23</sup> Moreover, AEP has devoted significant resources to provide coverage to about 90% of its 11-state service territory, and it has established fixed facilities in all viable areas.<sup>24</sup> Therefore, this waiver will only be utilized when AEP is working in uncovered remote areas, and, when operating, the coverage range will extend a maximum of five to six miles.<sup>25</sup> AEP asserts that it will operate infrequently on these channels, anticipating operations will only occur a few times per month.<sup>26</sup> We disagree with GWTCA’s argument that AEP does not show that its circumstances are unique, as AEP has demonstrated that use will be restricted to operations that are very unlikely to interfere with other licensees due to being infrequent, low power, in remote locations, and close to the ground, all of which are unique features of AEP’s operations pursuant to the requested waiver.<sup>27</sup>

8. Furthermore, application of section 90.621(b) in this instance would be contrary to the public interest. This waiver focuses on the safety of AEP’s field crews while working in uncovered areas.<sup>28</sup> Providing electric service is a complex endeavor, and maintenance requires these field crews to work in remote areas with difficult terrain where it is not feasible to construct fixed facilities.<sup>29</sup> While working in areas that lack network coverage, field crews may be exposed to unsafe conditions that can result in injuries or fatalities.<sup>30</sup> It is in the public interest to ensure that AEP’s personnel are able to directly and immediately speak with one another, especially if difficult situations arise.<sup>31</sup> Waiving the distance separation requirement will facilitate these critical communications and promote worker safety. Additionally, we agree with AEP that it would be contrary to the public interest to instead have its personnel learn procedures for alternative radios and then carry those radios with them.<sup>32</sup> Incorporating more radios would raise financial costs, cause unnecessary complexity, and increase confusion, and

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<sup>20</sup> 47 CFR § 1.925(b)(3).

<sup>21</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968)).

<sup>22</sup> 47 CFR § 90.621(b).

<sup>23</sup> AEP Waiver Request at 1, 3.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 2, 3.

<sup>26</sup> *Id.* at 1, 3.

<sup>27</sup> AEP Waiver Request at 3; GWTCA Comments at 5.

<sup>28</sup> AEP Reply at 2.

<sup>29</sup> *See id.*; AEP Waiver Request 1, 3.

<sup>30</sup> AEP Waiver Request at 1; AEP Reply at 2.

<sup>31</sup> *See* AEP Waiver Request at 1–2; AEP Reply at 2.

<sup>32</sup> AEP Waiver Request at 2.

AEP's field crews are already trained on and operate 800 MHz radios.<sup>33</sup> A grant of this waiver is in the public interest, as it will ensure reliable communications for AEP's field crews working in remote areas on challenging tasks.

9. We are not persuaded by the other arguments in the record opposing the waiver request. For example, we disagree with GWTCa's arguments that AEP did not narrowly tailor its waiver request and has not provided substantial detail with respect to how it plans to implement its waiver.<sup>34</sup> AEP's reply to GWTCa sufficiently addressed the limited scope of its request, and it is highly unlikely that AEP's infrequent usage will result in interference or affect co-channel licensees.<sup>35</sup> Moreover, the conditions we impose below address any such interference concerns should they occur. We also are not persuaded by GWTCa's argument that there will be potential interference to public safety entities, as AEP intentionally proposed frequencies not allocated to public safety.<sup>36</sup> While we understand there are non-public safety frequencies that have been assigned to public safety entities, GWTCa's suggestion related to safeguarding these entities is not practical for AEP to implement.<sup>37</sup> Furthermore, GWTCa indicates that AEP failed to notify potentially affected co-channel licensees prior to grant of the waiver; however, there is no obligation requiring AEP to provide notice prior to grant.<sup>38</sup> Finally, we are unconvinced by GWTCa's argument that AEP has not considered a reasonable alternative, as AEP explained the difficulty of training its personnel on additional complex radios operating on another spectrum band and of constructing fixed facilities in remote locations.<sup>39</sup> We find that these options are not logistically or financially feasible for AEP to implement.<sup>40</sup>

10. GWTCa filed the only comment opposing this waiver request, but there were two other comments filed expressing concern about the waiver's potential impact on cities in Tennessee.<sup>41</sup> Patrick Rollins' comment highlights the fact that it is unlikely an issue will occur unless Tennessee were to "ask for power restoration mutual aid after an ice storm or earthquake" because interference would hinder communication.<sup>42</sup> Allen Lark's comment focused on the frequency 854.0125 MHz and requested that if this frequency is granted that the separation requirement be followed to prevent interference because this frequency is used in Johnson City, Tennessee.<sup>43</sup> We find that the conditions imposed in this *Order* adequately address these commenters' concerns by requiring AEP to take specific steps to protect co-channel licensees from interference.

11. Accordingly, we grant AEP's waiver request to assign twelve 800 MHz channels for temporary fixed use without reference to the co-channel distance separation in section 90.621(b) and authority to operate on these 800 MHz channels on a mobile-to-mobile talk-around basis throughout its multi-state service territory, subject to the conditions described below.

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<sup>33</sup> *Id.*

<sup>34</sup> GWTCa Comments at 2, 3.

<sup>35</sup> AEP Reply at 3. AEP included information in its waiver request and its reply about how it would address potential interference. AEP Waiver Request at 2–4; AEP Reply, Attach. A.

<sup>36</sup> GWTCa Comments at 6; AEP Reply at 3 n.4.

<sup>37</sup> AEP Reply at 3 & n.3, n.4; *see* GWTCa Comments at 4.

<sup>38</sup> GWTCa Comments at 2; AEP Reply at 4–5; *see also* AEP Waiver Request at 3–4.

<sup>39</sup> GWTCa Comments at 4–5; AEP Waiver Request at 2; AEP Reply at 2.

<sup>40</sup> AEP Waiver Request at 1, 2; AEP Reply at 2.

<sup>41</sup> Patrick Rollins Comments (filing to highlight several Tennessee cities, specifically Memphis, Bartlett, Chattanooga, and Johnson City); Allen Lark Comments (filing to advocate for Johnson City, Tennessee).

<sup>42</sup> Patrick Rollins Comments. This commenter also stated, "[w]e would be able to assist American Electric Power Services with communication within the state if they should require interoperability." *Id.*

<sup>43</sup> Allen Lark Comments.

12. *Conditions.* This waiver grant is conditioned on the following, which largely reflects the steps that AEP specified in its waiver request:

- (1) AEP's use must be on a secondary, non-interference basis.
- (2) AEP's operation is limited to areas outside of the coverage of its licensed, fixed facilities but within AEP's current service territory, including any modifications to AEP's service territory in the future. If AEP modifies its service territory, it must update the record in this proceeding with information specifying the new boundaries of its service territory.
- (3) AEP's power is limited to a maximum of 50 watts effective radiated power (ERP) for temporary fixed stations, except in rare instances where it is necessary to exceed that power; and a maximum of 35 watts ERP for mobiles.
- (4) Whenever AEP operates pursuant to this waiver, the temporary fixed stations are limited to an antenna height of no more than five feet above the vehicle roof.
- (5) AEP's transmitter operators must monitor for a reasonable amount of time before operating and only operate on a channel that is not in use.
- (6) When using a channel, AEP must cease operations if a licensed user is observed unless AEP is able to obtain the consent of the co-channel licensee.
- (7) At least 10 days prior to operating, AEP must notify all co-channel licensees within 113 kilometers (70.21 miles) of those areas in its service territory where use of the waiver may be required. The notification must, at a minimum, include a description of AEP's operations, indicate that AEP's operations are secondary to co-channel licensees, and provide contact information for co-channel licensees experiencing interference to call or email. This condition applies with respect to co-channel licenses at the time of grant, as well as licenses granted in the future. AEP must constantly monitor for new licenses to remain in compliance.
- (8) Upon receiving a report of interference from a co-channel or adjacent channel licensee, AEP must immediately cease using the channel and not use it again until the matter is resolved to the satisfaction of the affected licensee.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, 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 waiver request filed by American Electric Power Service Corporation in connection with application FCC File No. 0010577631 IS GRANTED ON THE CONDITIONS SET FORTH ABOVE, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief  
Mobility Division  
Wireless Telecommunications Bureau