Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
	)	
Amendment of Part 90 of the Commission's Rules	)	WP Docket No. 07-100

REPLY COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

The National Rural Electric Cooperative Association ("NRECA") submits these reply comments to the Federal Communications Commission ("FCC" or "Commission") in response to the Commission's request for comments in the above noted dockets. NRECA wishes to express its support of and agreement with the initial comments filed by the Utilities Telecom Council ("UTC") and Edison Electric Institute ("EEI"). NRECA also offers examples of successful electric cooperative and public safety spectrum sharing arrangements demonstrating the capability of shared systems to make efficient and compatible use of spectrum that the FCC should seek to promote in the 700 MHz band.

NRECA is the national service organization for more than 900 not-for-profit, rural electric utilities that provide electric energy to approximately 42 million consumers in 47 states, or 12% of the nation's population. Of these more than 900 systems, 845 are distribution cooperatives or "wires" companies, providing retail electric service to end-users. The remaining 66 are generation and transmission ("G&T") cooperatives that own and operate or contract for

wholesale power and transmission services on behalf of their distribution cooperative members. In total, rural electric cooperatives ("Electric Cooperatives" or "Electric Co-ops") serve 18 million businesses, homes, schools, churches, farms and other establishments in a combined service territory footprint that covers approximately 75% of the nation's landmass.

I. UTILITIES SATISFY THE REQUIREMENTS TO USE THE PUBLIC SAFETY SERVICES SPECTRUM.

NRECA agrees with the positions expressed in initial comments filed by the UTC[1] and EEI[2] that utilities are eligible users of the 700 MHz "public safety services" broadband spectrum consistent with the three-part statutory definition in section 337(f) of the Communication Act of 1934, as amended ("Section 337(f)").[3] The sole or principal purpose of their communications is to protect the safety of life, health or property. Electric Co-ops are non-governmental entities that are, or can be, authorized by governmental entities whose primary mission is to provide public safety services. The communications services are for utilities' own, internal use and are not services made commercially available to the public. The Commission's tentative conclusion of utility ineligibility for the public safety broadband spectrum reiterated in its recent report and order and further notice[4] is incorrect and contrary to its First Report and Order[5] and to Section 337's plain language.

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[1] Comments filed by UTC in PS Docket No. 06-229, WT Docket No. 06-150, and WP Docket No. 07-100 (filed April 11, 2011) ("UTC Comments").

[2] Comments filed by EEI in PS Docket No. 06-229, WT Docket No. 06-150, and WP Docket No. 07-100 (filed April 11, 2011) ("EEI Comments").

[3] 47 U.S.C. § 337(f)(1).

[4] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, WT Docket No. 06-150; PS Docket No. 06-229; WP Docket No. 07-100 (Jan. 26, 2011) .

[5] First Report and Order, 14 FCC Rcd. 152, 187 at 187-88 ("a commercial utility company, with appropriate governmental authorization, is eligible to hold licenses for spectrum in the 700 MHz

Secure, reliable communications have always been and will continue to be a necessity in the safe provision of electric service. Increasingly, those communications are a mix of voice and data communications.[6] Electric utility voice communications have traditionally been achieved through private land mobile radio and in some instances where coverage is available and of sufficient reliability, cellular telephone service. These communications support the daily functioning of utility operations, by allowing for communications between crews deployed in different field locations as well as between field crews and utility offices. For example, voice communications provide for utility field crew dispatch; the conveying of work, service, and switching orders[7] from the office to field crews; crew reporting of service restoration status and other onsite conditions, such as downed lines and other unsafe conditions; among other things.

Data communications are becoming increasingly integral to routine utility operations, particularly in the areas of mobile workforce management and distribution automation. Mobile workforce management covers a wide range of data-based communications, including those that automate processes that were often done on paper by field crews and then re-keyed by utility office personnel.[8] Data communications can also include queries of statewide underground utilities locator systems[9] and remote access to a utility's GIS and GPS databases to allow for near real-time data queries and updates. Distribution automation likewise covers a broad array of

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band for use when it provides services to protect the safety of life, health or property that it does not make commercially available to the public.")

[6] UTC Comments at 12 and EEI Comments at 16.

[7] A work order refers to orders related to construction activities. A service order refers to routine work like orders for connecting and disconnecting service or to respond to outage reports at a customer location. A switching order refers to opening and closing switches to change power flow over distribution and/or transmission lines and is thus critical information to convey to other crews working in the area.

[8] This includes replacement of some of the voice communications described above.

[9] *See, e.g.*, Miss Utility for Washington, D.C. at http://www.missutility.net/washingtondc/.

automated monitoring and control functions via two-way communications throughout the electric distribution network.[10] Just one category of distribution automation involves intelligent line switching, which allows for remote monitoring and control of circuit breakers, reclosers and load break switches that enable the utility to interrupt, restore, and redirect the flow of power with or without manual intervention to enable faster and safer restoration of electric service.

The Commission need not be concerned that finding utilities to be eligible to use the public safety broadband spectrum opens the door to an unlimited number of potential new users. Unlike independent power producers, power marketers, alternative energy suppliers,[11] and other electric industry players, ***utilities*** own and operate facilities to provide service to end-users. Like investor-owned and publicly owned utilities, Electric Cooperatives have a legal "obligation to serve" the end-users within their service territories on just and reasonable terms and without discriminating.[12] Simply stated, ***electric utilities*** are the entities responsible for "keeping the lights on." They are the ones that respond in an emergency, coordinating their activities with police, fire, ambulance and other public safety entities at the scene. Given the inherent dangers of electricity, all electric utilities (but not other industry players) have a duty to protect the general public from hazards associated with its generation and delivery.[13] An electric utility's obligation to serve, therefore, is imbued with a responsibility for public safety. The first part of

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[10] *See, e.g.,* Electric Power Research Institute, IntelliGrid Architecture, Overview of Advanced Distribution Automation, http://intelligrid.epri.com/architecture/use_cases/DO_ADA_Overview.htm.

[11] As used here, "alternative energy suppliers" refers to entities other than traditional electric utilities, which are authorized to provide retail service in states where consumers may choose their retail provider. The alternative energy supplier contracts with the consumer to provide the electric supply or "electrons" that are delivered over the traditional electric utility's network.

[12] *See,* 64 Am. Jur. 2d *Public Utilities* §21 (2010), *and* 27A Am. Jur. 2d *Energy and Power Sources* § 169 (2010).

[13] *See,* 27A Am. Jur. 2d *Energy and Power Sources* §§ 181 and 203 (2010).

Section 337(f)'s test, that the sole *or* principal purpose[14] of the communications is to protect the safety of life, health or property, is clearly satisfied by utilities. These communications occur not only in emergency situations where public safety and utilities must coordinate, but in everyday utility operations where the safety of the utility's crews and the general public is paramount.[15]

Electric utilities can satisfy the other prongs of Section 337's three-part test as well. Electric Cooperatives, like investor-owned utilities, are non-governmental entities that can be authorized by governmental entities whose primary mission is to provide public safety services. A sharing agreement between a non-governmental utility and a government entity primarily providing public safety services satisfies Section 337's requirements. It does not, as the Commission concluded, effectively "bypass" these requirements.[16] As UTC argues, the Commission should focus on the nature of the communications services, rather than the types of entities using the spectrum.[17] Further, as noted by EEI, "By definition, the public safety licensee would have the necessary authorization and the spectrum use would remain principally to provide public safety [services]."[18] EEI and UTC further explain that spectrum used for traditional utility purposes has been held to be only private, internal communications.[19] EEI

[14] NRECA agrees with EEI's comments that the Commission must follow basic statutory construction rules to give effect to the word "or" in the phrase "sole or principal purpose" of Section 337. EEI Comments at 9.

[15] UTC Comments at 11-17.

[16] Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 14301, 14406 (2008).

[17] UTC Comments at 9.

[18] EEI Comments at 9-10.

[19] EEI Comments at 10 and UTC comments at 25-26.

further cites Congressional recognition of the private, non-commercial nature of utility communications as well as Congressional support for shared radio systems.[20]

II. EXAMPLES OF PUBLIC SAFETY/ELECTRIC COOPERATIVE SHARED SYSTEMS

NRECA agrees with UTC's initial comments that it is not necessary for the Commission to be overly prescriptive in its requirements for sharing agreements.[21] As EEI, suggests, the Commission should instead adopt flexible guidelines.[22] The following examples show that the public safety and utilities involved in sharing agreements in other spectrum bands are quite capable of crafting agreements that recognize and accommodate local needs.

A. Consolidated Communications Network of Colorado

The Consolidated Communications Network of Colorado ("CCNC") is a statewide digital trunked radio system with operations in both the 700 and 800 MHz bands utilized by state public safety and homeland security entities, and very recently, pursuant to waiver, Holy Cross Electric Association, Inc. ("Holy Cross").[23] Holy Cross is an Electric Cooperative that provides electric and gas services in Eagle, Pitkin, and Garfield counties in Colorado. As noted in the State of Colorado's request for waiver of the Commission's Section 90.179 rules to allow Holy Cross to share use of the CCNC's 800 MHz public safety frequencies, the creation of the CCNC was not only to enhance public safety interoperability but to "vastly improve Colorado's ability to

[20] EEI Comments at 10.

[21] UTC Comments at 3.

[22] EEI Comments at 11-15.

[23] FCC, Order Granting Request for Waiver of Section 90.179(a) of the Commission's Rules by the State of Colorado and Holy Cross Electric Association, Inc, DA 10-1152 (June 24, 2010).

respond to natural disasters, acts of terrorism, and technological or chemical catastrophes."[24] The request went on to explain that, "Holy Cross Energy's electric power maintenance and restoration efforts must be coordinated with public safety and homeland security functions in the event of the kinds of events mentioned above. There is a natural fit between public utilities and Public Safety agencies that compels all of these entities to work together. It makes sense to integrate communications capabilities of these entities as well."[25]

In a supplemental filing made pursuant to this waiver request, the state explained that the waiver was being sought to "enhance interoperability between the [Digital Trunked Radio System] and Holy Cross users. Interoperable communications is *often necessary during emergencies and major storms* when public safety officials must coordinate activities of law enforcement officers, EMS responders, firefighters, highway maintenance crews with power company crews *to insure the safety of the public and the individuals involved*."[26]

B. State of Ohio Multi-Agency Radio Communications System

The Ohio Multi-Agency Radio Communication System ("MARCS")[27] is an 800 MHz trunked voice and data network providing statewide interoperability to more than 700 local, state and federal public safety/public service agency users throughout Ohio. As noted in its mission statement, MARCS is designed to "promote interoperability, in order to save lives and maximize effectiveness in both normal operations and emergency situations."[28] Eleven of the state's 25

[24] Request for Waiver of Section 90.179 of the Commission's Rules by Holy Cross Energy and the State of Colorado (filed May 15, 2008).

[25] Id.

[26] Id. (Emphasis added.)

[27] *See,* Ohio Dept. of Admin. Services, MARCS Services, http://www.das.ohio.gov/Divisions/InformationTechnology/MARCSServices/tabid/124/Default.aspx

[28] Id.

distribution Electric Cooperatives and Ohio's one G&T currently use MARCS pursuant to Commission waiver.[29] MARCS automatically manages network traffic on a first come-first serve basis, with public safety users having priority in certain circumstances. By contract, MARCS officials can set a priority of use higher than any of the Electric Cooperative users; however, there has been no need to do so in the nearly two years that Electric Co-ops have been on the MARCS system. This reflects adequate MARCS system capacity to accommodate the needs of Ohio Electric Cooperatives, which operate primarily in the rural areas of the state.

C. Douglas County, Oregon

On October 6, 2006, the FCC granted a waiver request to allow Douglas Electric Cooperative to use the trunked radio system operating in the Public Safety Pool in the 450-470 MHz (UHF) bands licensed to the County of Douglas in Oregon.[30] In support of its request to utilize the County's licensed frequencies, Douglas Electric noted that the sharing agreement would provide it with better overall communications between headquarters and field crews "thereby enhancing crew safety and facilitating prompt repair of its power delivery system."[31] Douglas County recognized that prompt repairs to the electric distribution system are important to the public interest and agreed to let the cooperative utilize its public safety communications system, obviating the need for Douglas Electric to construct a redundant communications

[29] The Electric Co-ops currently using the system are Buckeye Power, Buckeye Rural Electric Cooperative, Butler Rural Electric Cooperative, Carroll Electric Cooperative, Consolidated Electric, Frontier Power Company, Guernsey-Muskingum Electric Cooperative, Logan County Cooperative Power and Light, Midwest Electric, Pioneer Rural Electric Cooperative, South Central Power, and Union Rural Electric Cooperative. *See,* FCC, Order Granting Request for Waiver of Section 90.179(a) of the Commission's Rules, DA 09-429 (Feb. 23, 2009).

[30] FCC, Order Granting Request for Waiver of Section 90.179 of the Commission's Rules, DA 06-1996 (Oct. 6, 2006).

[31] Request for Waiver of Section 90.179 of the Commission's Rules by Douglas Electric Cooperative (filed Aug. 8, 2006).

system. Douglas Electric also had letters from the Douglas County Sheriff's Office and the State of Oregon's Office of Homeland Security supporting the sharing of the communications network and the waiver request. The Commission recognized that the sharing arrangement would "allow [Douglas Electric] personnel to communicate directly with public safety entities in emergency situations."[32] Further, the FCC noted that "the shared system operates in a rural environment, it is highly unlikely that the proposed shared use could result in a shortage of public safety spectrum"[33] and, in fact, would result in more efficient spectrum use.

D. ClearTalk in Central Illinois

Four Electric Cooperatives formed the Illinois Cooperative Association to operate ClearTalk, an 800 MHz radio service created in 1997 after severe ice storms across the state tested the resiliency of the four Electric Co-ops' individual communications systems.[34] The ClearTalk system connected the Electric Co-ops' four independent communications networks into one interoperable network providing service across 63 counties in central Illinois, thus enabling communications between the Electric Co-ops and public safety users in times of emergency. The system is built to public safety standards, provides public safety with priority access, and currently serves several public safety entities including state and county law enforcement and ambulance units. In this sharing agreement, Illinois Cooperative Association

[32] FCC *supra* note 30.

[33] Id.

[34] ClearTalk uses Business, Industrial/Land Transportation and Specialized Mobile Radio frequencies and operates on a not-for-profit basis.

received a waiver from the FCC in 2001 allowing public safety entities to operate on the ClearTalk system.[35]

III. CONCLUSION

WHEREFORE, for the reasons stated above, NRECA respectfully requests that the Commission consider these reply comments and urges the Commission to adopt an order clarifying the ability: (1) of utilities to meet the requirements of Section 337(f) and (2) of utilities and public safety entities to enter into sharing agreements for communications systems operating in the 700 MHz public safety broadband spectrum that are consistent with flexible guidelines issued by the Commission.

Respectfully submitted,

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[35] FCC, Order Granting in Part & Denying in Part Request for Waiver of Part §90.179(a) and §90.603(b), DA 01-3017 (Jan. 18, 2001) (granting request to permit sharing of Business and I/LT channels with public safety entities).