

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

In the Matter of Application of	)	
	)	
DUQUESNE LIGHT COMPANY	)	File Nos. 0001411158, 0001411277,
	)	0001411279, 0001411361, 0001411366,
Request for Waiver to Authorize the Use of	)	0001411833, 0001545161
Channels in the 1427-1432 MHz Telemetry Band	)	

**ORDER**

**Adopted: November 29, 2004**

**Released: December 1, 2004**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us seven applications filed by the Duquesne Light Company (Duquesne) to operate a telemetry system in the 1427-1432 MHz band.<sup>1</sup> In connection with these applications, Duquesne requests a waiver of Sections 90.259(b)(9) and (10) of the Commission's Rules in order to operate several frequencies out of compliance with the channel plan for the 1427-1432 MHz band.<sup>2</sup> For the reasons discussed herein, we grant the waiver request in part. Specifically, we grant the waiver request on the condition that Duquesne operate on the non-compliant frequencies on a secondary<sup>3</sup> basis.

2. *Background.* In 1996-97, Duquesne purchased a fixed meter reading network from Itron, Inc. (Itron) to serve the Pittsburgh, Pennsylvania area.<sup>4</sup> The meter reading system operates in the 1427-1432 MHz band, and consists of more than ten thousand transmitters.<sup>5</sup> At the time of Duquesne's purchase, all telemetry systems in the 1427-1432 MHz band operated on a secondary basis to Federal Government operations, and without an established channel plan.<sup>6</sup> In 2002, the Commission reallocated the 1427-1432 MHz band (and other bands) for non-Government use.<sup>7</sup> The Commission also modified the service rules

<sup>1</sup> FCC File Nos. 0001411158, 0001411277, 0001411279, 0001411361, 0001411366, 000141833, 0001410907.

<sup>2</sup> See attachment to FCC File Nos. 0001411158, 0001411277, 0001411279, 0001411361, 0001411366, 000141833, 0001410907 (Waiver Request).

<sup>3</sup> Secondary operations may not cause interference to operations authorized on a primary basis. 47 C.F.R. § 90.7.

<sup>4</sup> Waiver Request at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> See 47 C.F.R. § 90.259 (2001).

<sup>7</sup> Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, ET Docket No. 00-221, *Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 368 (2002) (*Reallocation Report and Order*). The Commission reallocated these bands pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA-93), Pub. L.103-66, 107 Stat. 312 (1993), and the Balanced Budget Act of 1997 (BBA-97), Pub. L.105-33, 111 Stat. (continued....)

for telemetry systems in the 1427-1432 MHz band by establishing a channel plan and setting power and antenna height limits.<sup>8</sup> The Commission stated that incumbents would retain their secondary status, and those that wished to upgrade to primary status must file an application on the same basis as a new applicant.<sup>9</sup>

3. Duquesne currently operates its meter reading system as an incumbent with secondary status under a nationwide license issued to Itron.<sup>10</sup> Between August 8 and 29, 2003, Duquesne filed applications to license its existing operations on a primary basis. Under the channel plan established for the 1427-1432 MHz band, assignable frequencies occur in increments of 12.5 kHz from 1427.00625 MHz to 1431.99375 MHz.<sup>11</sup> Specifically, Sections 90.259(b)(9) and (10) of the Commission's rules specify that – in the 1427-1432 MHz band – systems may operate 50 kHz bandwidth channels with center frequencies of 1427.025 MHz, 1427.075 MHz, 1427.125 MHz, etc. Duquesne's applications, however, contains four frequencies – 1427.3000 MHz, 1427.8500 MHz, 1427.9000 MHz, and 1427.9500 MHz – which fail to conform to the channel plan established by the Commission.<sup>12</sup>

4. Duquesne notes that its current system was designed prior to the creation of a channel plan for the 1427-1432 MHz band and that channel versatility was not a feature incorporated into the equipment at that time.<sup>13</sup> It argues that continued use of its installed equipment on existing channels will not materially impact other users, because the system was engineered to avoid interference with adjacent users.<sup>14</sup> Furthermore, Duquesne notes that the geographic area of its non-compliant operations will not expand because Itron no longer supplies equipment not in accord with the new channel plan.<sup>15</sup> Finally, Duquesne notes that replacing all of its existing equipment in order to comply with the channel plan could cost as much as \$26.65 million.<sup>16</sup>

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application

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251 (1997). Section 6001(a) of the OBRA-93 (codified at 47 U.S.C. § 925(b)(1)) and Section 3002(e) of the BBA-97 (codified at 47 U.S.C. § 925(c)(1)).

<sup>8</sup> See Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, 17 FCC Rcd 9980, 10036 ¶ 142-44 (2002) (*27 MHz Report and Order*).

<sup>9</sup> *Id.* at 10004 ¶ 57.

<sup>10</sup> Call Sign WPCG645.

<sup>11</sup> 47 C.F.R. § 90.259(b)(9).

<sup>12</sup> Duquesne's applications specify three additional frequencies which do conform to the channel plan – 1427.2250 MHz, 1427.2750 MHz, and 1427.4750 MHz

<sup>13</sup> See Waiver Request at 1.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.* at 1-2.

<sup>16</sup> See *id.* at 2.

to the present case and that grant of the waiver would be in the public interest;<sup>17</sup> or that, 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.<sup>18</sup> We conclude that Duquesne has demonstrated that its request should be granted in part under the circumstances presented.

6. The Commission established a channel plan for the 1427-1432 MHz band in order to maximize spectrum efficiency while minimizing the potential for interference.<sup>19</sup> Duquesne's continued operations on a non-standard 50 kHz channel would potentially affect two standard channels – the channel above and below the non-standard channel. Duquesne indicates, however, that the system was engineered to avoid interference with adjacent users, and that any future expansion of its system will be accomplished using equipment that complies with the Commission's channel plan. Under these circumstances, we believe that Duquesne should be licensed on the non-standard channel on a secondary basis, *i.e.*, on the condition that its operations cause no interference to any licensee. In this way, Duquesne may continue to operate on its present frequency without incurring a significant expense for Duquesne and its utility customers, but without impairing the spectrum efficiency envisioned by the rules governing the 1527-1432 MHz band. We believe that, in this instance, grant of Duquesne's waiver request neither significantly impedes spectrum efficiency nor increases the chance for interference.

7. This waiver is expressly limited to the lifetime of Duquesne's existing 1427-1432 MHz equipment. Any equipment that Duquesne subsequently acquires must comply with the channel plan in our Rules.

8. Accordingly, 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 C.F.R. § 1.925, that the waiver requests filed by Duquesne Light Company, on August 8, 2003, with respect to FCC File Numbers 0001411158, 0001411277, 0001411279, 0001411361, 0001411366, 000141833, and 0001410907 ARE GRANTED SUBJECT TO THE CONDITION indicated above.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), that applications FCC File Nos. 0001411158, 0001411277, 0001411279, 0001411361, 0001411366, 000141833 and 0001410907 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

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<sup>17</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>18</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>19</sup> *27 MHz Report and Order*, 17 FCC Rcd at 10036 ¶ 142.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau