

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

In the Matter of Application of)	
)	
VIRGINIA ELECTRIC AND POWER)	File No. 0001540645
COMPANY)	
)	
Request for Waiver to Authorize the Use of)	
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 an application filed by the Virginia Electric and Power Company (VEPCO) to operate a telemetry system in the 1427-1432 MHz band.¹ In connection with this application, VEPCO requests a waiver of Sections 90.259(b)(9) and (10) of the Commission's Rules in order to operate one frequency out of compliance with the channel plan for the 1427-1432 MHz band.² For the reasons discussed herein, we grant the waiver request in part. Specifically, we grant the waiver request on the condition that VEPCO operate on the non-compliant frequency on a secondary³ basis.

2. *Background.* In 1996-97, VEPCO purchased a fixed meter reading network from Itron, Inc. (Itron) to serve the Richmond, Virginia area.⁴ The meter reading system operates in the 1427-1432 MHz band, and consists of more than ten thousand transmitters.⁵ At the time of VEPCO'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.⁶ In 2002, the Commission reallocated the 1427-1432 MHz band (and other bands) for non-Government use.⁷ The Commission also modified the service rules

¹ FCC File No. 0001540645.

² See attachment to FCC File No. 0001540645 (Waiver Request)

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

⁴ Waiver Request at 1.

⁵ *Id.* at 2.

⁶ See 47 C.F.R. § 90.259 (2001).

⁷ 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. 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)).

for telemetry systems in the 1427-1432 MHz band by establishing a channel plan and setting power and antenna height limits.⁸ 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.⁹

3. VEPCO currently operates its meter reading system as an incumbent with secondary status under a nationwide license issued to Itron.¹⁰ On December 9, 2003, VEPCO filed an application 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.¹¹ 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. VEPCO's application, however, contains one frequency, 1427.5000 MHz, which fails to conform to the channel plan established by the Commission.¹²

4. VEPCO 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.¹³ 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.¹⁴ Furthermore, VEPCO 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.¹⁵ Finally, VEPCO notes that replacing all of its existing equipment in order to comply with the channel plan could cost as much as \$26.65 million.¹⁶

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 to the present case and that grant of the waiver would be in the public interest;¹⁷ or that, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable,

⁸ 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*).

⁹ *Id.* at 10004 ¶ 57.

¹⁰ Call Sign WPCG645.

¹¹ 47 C.F.R. § 90.259(b)(9).

¹² VEPCO's application specifies five additional frequencies that do conform to the channel plan – 1427.0250 MHz, 1427.2250 MHz, 1427.3250 MHz, 1427.8750 MHz, and 1427.9750 MHz.

¹³ See Waiver Request at 1.

¹⁴ See *id.*

¹⁵ See *id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ We conclude that VEPCO 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.¹⁹ VEPCO'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. VEPCO 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 VEPCO 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, VEPCO may continue to operate on its present frequency without incurring a significant expense for VEPCO 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 VEPCO's waiver request neither significantly impedes spectrum efficiency nor increases the chance for interference.

7. This waiver is expressly limited to the lifetime of VEPCO's existing 1427-1432 MHz equipment. Any equipment that VEPCO 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 request filed by Virginia Electric and Power Company, on December 9, 2003, with respect to FCC File Number 0001540645 IS 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 application FCC File No. 0001540645 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

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

¹⁸ 47 C.F.R. § 1.925(b)(3)(ii).

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