

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698- 806 MHz Band	)	WT Docket No. 08-166
	)	
Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition	)	WT Docket No. 08-167
	)	
Amendment of Parts 15, 74 and 90 of the Commission’s Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones	)	ET Docket No. 10-24
	)	

To: The Commission

**COMMENTS OF THE NUCLEAR ENERGY INSTITUTE  
AND UTILITIES TELECOM COUNCIL**

The Nuclear Energy Institute (“NEI”) and the Utilities Telecom Council (“UTC”) on behalf of the operators of the nation’s 104 nuclear power plants (collectively “ the Utilities”), hereby submit their comments on the Commission’s Report and Order and Further Notice of Proposed Rulemaking (the “R&O and Further Notice”)<sup>1</sup>, in which the Commission is seeking comment on, among other things, whether it would serve the public interest to extend the license eligibility under Subpart H of Part 74 of the Rules to permit the licensed use of low power

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<sup>1</sup> *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 08-166, 2010 WL 176700 (F.C.C.) (“R&O and Further Notice”).*

auxiliary stations inside nuclear power plants. The Utilities continue to urge the Commission to grant expeditiously their Petition for Waiver to license under Part 90 the use of Telex wireless headsets in nuclear power plants, but the Utilities would alternatively endorse generally the Commission's proposal to expand eligibility to permit this use under Part 74. Either form of relief would provide additional regulatory certainty, which is needed for these critical infrastructure communications that are essential for nuclear plant refueling operations, including plant worker safety. By contrast, experimental licensing and/or Part 15 unlicensed authorization is uncertain, and restrictions proposed in the Further Notice could impede operation of Telex headsets in nuclear power plants. As such, the Utilities urge the Commission to expeditiously grant their Petition for Waiver, but in the alternative, urge the Commission to expand eligibility under Part 74, as proposed in the Further Notice.

**I. The Utilities Urge the Commission to Grant Expeditiously Their Petition for Waiver.**

As noted above and in the R&O and Further Notice,<sup>2</sup> the Utilities have pending at the Commission a Petition for Waiver of the allocation and licensing provisions of the Part 2 and 90 rules in order to permit "Power Licensees" (as defined in Part 90.7 of the Commission's rules) to obtain licenses under Part 90 for use of certain mission-critical communications equipment certificated for use under Subpart H of Part 74 of the rules, inside nuclear power plants.<sup>3</sup> In the

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<sup>2</sup> See, R&O at ¶139.

<sup>3</sup> The Utilities hereby incorporate by reference the information submitted in their Petition for Waiver, filed on September 23, 2009, in WT Docket No. 09-176 (hereinafter "Petition for Waiver"), as well as in their Reply Comments filed on November 5, 2009, and their *ex parte* filing of February 26, 2010. Among other things, the February 26, 2010 *ex parte* letter explained the plants need for at least a three (3) year period in which to transition their headset systems from 698-806 MHz band because the plants have had no alternative spectrum home that offers regulatory licensing certainty. Granting licensees of nuclear power plants eligibility to license headsets pursuant to Part 74, Subpart H, as suggested in the Further Notice, would allow plants to plan, budget and execute a migration from indoor-only use of the 700 MHz band into the remaining Part 74 bands without disrupting plant outage schedules during the three-year transition period the Utilities have requested.

R&O and Further Notice, the Commission has invited comment on alternative relief, whereby it would expand eligibility under Part 74 to include the use of low power auxiliary equipment (i.e. wireless headsets) for use inside nuclear power plants.<sup>4</sup>

The Utilities believe that the proposal to expand eligibility under Part 74 to allow the use of wireless headsets inside nuclear power plants, modified as recommended below, could effectively provide the relief that the Utilities sought in their Petition for Waiver. However, neither the short term relief (in place by waiver of Part 15 during the development of the final rules under the Further Notice) nor the specific long-term licensing opportunities (proposed in the Further Notice), adequately address the unique communications requirements of nuclear power plants, as illustrated in the Petition for Waiver and as more fully explained below. Accordingly, the Utilities assert that the unique circumstances articulated in the Petition for Waiver<sup>5</sup> fully demonstrate the compelling public interest considerations and justify Commission action to grant the Petition for Waiver to permit licensing of the Telex headsets under Part 90.

The Utilities appreciate the significant efforts by the Commission to devise an arrangement through which certain users of low power auxiliary station equipment can continue to use such mission-critical equipment, provided that there is no significant risk of harmful interference. The Utilities further note their willingness to work with the Commission to craft a solution, as part of the Further Notice, through which Part 74 licensing could become a satisfactory alternative, provided that it gives the nuclear plants the scope and level of relief sought in the Petition for Waiver, and, as to potential operations outside of the scope of the Petition for Waiver, offers equal treatment for all low power auxiliary operations to be licensed under this expanded eligibility provision, as more fully discussed in Section II hereof.

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<sup>4</sup> Id.

<sup>5</sup> See, Petition for Waiver, pp. 3-21.

**II. The Public Interest Would Be Served if Nuclear Power Plants Were Eligible to be Part 74, Subpart H, Licensees.**

The Utilities agree that expanding the eligibility provisions of Subpart H of Part 74 of the rules to allow nuclear plants to use low power auxiliary stations would be in the public interest, provided that the details of the regulatory relief spelled-out in the Petition for Waiver are adequately reflected in the final rules. The Utilities have presented in the Petition for Waiver exhaustive operational, as well as engineering data, which demonstrates the unique and compelling need for Telex equipment to supply mission-critical communications at the plants, especially during outages when the plants are shut-down and spent radiated fuel is replaced with fresh fuel.<sup>6</sup>

Beyond the limited scope of the requested waiver, the Utilities respectfully suggest that, to the extent that the Commission is proposing to allow Part 74 licensing by other venues (sport arenas, theaters, religious facilities), nuclear plants should also be eligible for licensing at least to the same extent; e.g. licensing for both indoor and outdoor use. Accordingly, while the Petition for Waiver seeks only indoor licensing rights, there are outdoor operations (particularly associated with the movement of spent fuel from inside the power block buildings to outdoor storage facilities) where the continuous use of the Telex headset would be highly useful and efficient. Such uses fall outside of the scope of the requested waiver because the scope of the Petition for Waiver has been narrowed to the bare minimum necessary to ensure safe plant operation and protect worker safety, where there is simply no viable alternative for the plants. But that is not in the least to say that permitting outdoor operations too would not be beneficial to safe and efficient operation of nuclear plants. For that reason, the nuclear plants urge that, as to

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<sup>6</sup> Id.

operations outside of the scope of the Petition for Waiver, allowing the same, and not less regulatory relief than the other types of low power auxiliary operations that are under consideration for Part 74 licensing, is the proper outcome.

**III. Licensing of Nuclear Plants Under Part 74 Should Not Require Co-Channel TV Separation.**

The R&O contemplates that, pursuant to Section 74.802(b), the Commission will authorize operation at closer distances, on a case-by case basis. Given the fact that the Utilities have demonstrated that the operation of the Telex equipment inside nuclear plant buildings does not interfere with TV broadcast reception, no benefit would be derived from imposing distance separation requirements on in-plant licensing. Further, the combined loss of access to frequencies in the 700 MHz band and the loss of other frequencies not operating in TV white spaces could effectively deny some plants the frequencies they need to maintain the operation of communications systems that are essential to worker safety. As such, the Utilities request that the Commission reach a determination, in advance, that co-channel distance separation requirements are unnecessary or should be waived, at least for indoor operations, in the context of licensing the nuclear plants' use of the Telex equipment, under Part 74. Only with such an arrangement in place will the plants have certainty that the frequencies will be available to provide this mission-critical communications service.

**IV. Part 74 Eligibility Should be Narrowly Defined.**

As described in the Petition for Waiver, because of the unique operational requirements associated with the Telex headsets at the nuclear plants, eligibility can be narrowly tailored to "Power Licensees" under Section 90.7 of the FCC rules. Further, such Power Licensees would have to own or operate nuclear power plants (or be a subsidiary of a Power Licensee providing

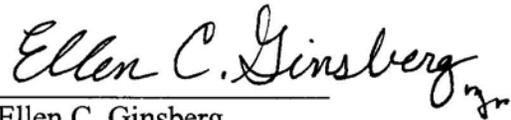
supporting services to one or more plants). In addition, the Utilities would support the requirement that low power auxiliary stations must be certified for operations under Subpart H of FCC Rule Part 74.

## **V. Conclusion.**

The Utilities respectfully suggest that the unique circumstances and compelling public interest factors presented in the Petition for Waiver offer the Commission a clear path to fashion the regulatory relief needed by the nuclear plants, without any risk of harmful interference to any other spectrum licensees; *i.e.*, grant of the Petition for Waiver. In the alternative, the Utilities, on behalf of the nuclear plants, will work with the Commission to fashion acceptable regulations under Part 74 that protect plant workers and ensure safe plant operation, while also protecting the rights of other spectrum licensees. To this end, expanded eligibility that enables the nuclear plants to obtain Part 74 licenses, is a strong start. However, the plants would need the full range of protections and permissions set forth in the Petition for Waiver and seek “equal treatment” with the sports venues should licensed outdoor use be permitted via the Further Notice, in the context of fashioning this expansion of the eligibility requirements for Part 74 licensing.

For the foregoing reasons, the Commission should expand the eligibility provisions for Part 74 licensing, in order to permit the nuclear plants to be licensed, but must take care to include the provisions set forth herein when setting the scope of the regulatory relief as well as the nuclear plants’ licensing rights. Only with all of these factors taken into account will the nuclear plants be able to continue to use the Telex equipment to promote worker health and safe plant operations.

Respectfully submitted,



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