

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

In the Matter of
FLINT HILLS RESOURCES PINE BEND, LLC
Request for Waiver to License UHF Public Safety Channels in Minnesota
File No. 0008061316

ORDER

Adopted: February 8, 2019

Released: February 8, 2019

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the above-referenced application filed by Flint Hills Resources Pine Bend, LLC (Flints Hills Resources) seeking three 450-470 MHz band Public Safety (PS) Pool channels for use in its radio system in Minnesota. In connection with this application, Flint Hills Resources requests a waiver of section 90.20 of the Commission's rules to permit it to use PS Pool channels for which it is not otherwise eligible. For the reasons set forth below, we grant the request and will process the application.

II. BACKGROUND

2. Flint Hills Resources operates one of the largest oil refineries in the United States in Rosemount, Minnesota, a suburb of Minneapolis-St. Paul. It holds eight 450-470 MHz band Industrial/Business (I/B) Pool licenses for channels that it uses not only for operational communications regarding matters such as energy production, construction, and maintenance, but also to support public safety activities both on-site and in surrounding communities. Specifically, Flint Hills Resources maintains its own fire crew and equipment to prevent, manage, and mitigate fire-related issues at the refinery, thus relieving local area fire departments of primary responsibility for handling those matters,

1 See File No. 0008061316 (filed Jan. 12, 2018; amended Feb. 9 and Mar. 26, 2018); see also Flint Hills Resources Pine Bend, LLC Request for Waiver to Use UHF Public Safety Frequencies in Minnesota (filed Jan. 12, 2018) (Request).

2 See 47 CFR § 90.20.

3 Request at 1. The refinery has a capacity of approximately 340,000 barrels per day, and employs 1,300 full-time workers plus thousands of temporary workers for certain projects. Id.

4 See Call Signs KNN594, WNFH525, WNQC936, WPMK260, WPRL527, WPTN983, WQEP713, and WQXN631.

5 See Request at 1-2.

and it works closely with local fire, emergency medical services, and police departments through long-established mutual aid programs.⁶

3. Flint Hills Resources states that its aging analog radio system no longer meets current needs and is no longer supported by the vendor.⁷ It considered a number of digital technologies for its new system, and selected 450 MHz Terrestrial Trunked Radio (TETRA) because of its propagation, spectrum efficiency, and competitive vendor options.⁸ TETRA includes no monitoring capability and cannot operate on shared channels.⁹ Flint Hills Resources's frequency coordinator, the Enterprise Wireless Alliance (EWA), could locate only one I/B Pool channel that was available on an exclusive basis for TETRA operation, due to spectrum demand in the Minneapolis-St. Paul area.¹⁰ Flint Hills Resources then obtained five part 22 frequencies on the secondary market.¹¹ This will meet most of its needs.

4. To satisfy the remaining system requirements, Flint Hills Resources proposes to use three 450-470 MHz band PS Pool channels at one of the two sites covering the refinery property.¹² It argues that its proposed operations with directional down-tilt antennas and five watts effective radiated power will not preclude reuse of the requested PS Pool channels by public safety entities in the general area, and that such reuse is not even likely to be needed because there already are a substantial number of unused PS Pool channels in the vicinity.¹³ Flint Hills Resources states that it will continue to use many of its current I/B Pool channels to support operations that will not be conducted on the TETRA system, but will cancel its authorizations for any existing channels that are not needed for operational purposes after the transition to the new system.¹⁴

5. The Wireless Telecommunications Bureau sought comment on the request for a waiver to permit use of PS Pool channels.¹⁵ Most commenters support the waiver request.¹⁶ In addition, the fire departments of Rosemount and the adjacent communities of Eagan and Inver Grove submitted letters in

⁶ *Id.* at 2.

⁷ *See id.* at 1.

⁸ *Id.* at 2.

⁹ *Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked Radio (TETRA) Technology*, Report and Order, 27 FCC Rcd 11569, 11572, para. 7 (2012).

¹⁰ Request at 2-3. That channel is now among the I/B Pool channels licensed to Flint Hills Resources as mentioned above, and is not part of the instant application.

¹¹ *Id.* *See* Call Signs WRAT946, WRAT947, WRAT948, WRAT949, and WRAT950.

¹² Specifically, Flint Hills Resources proposes to use frequency pairs 460/465.100 MHz, 460/465.250 MHz, and 460/465.525 MHz. EWA obtained concurrence from PS Pool frequency coordinators that the requested channels are unassigned and will not cause interference to existing operations.

¹³ *See* Request at 3.

¹⁴ *See id.* at 2-3 n.6.

¹⁵ *See Wireless Telecommunications Bureau Seeks Comment on Flint Hills Resources Pine Bend, LLC Request for Waiver to Use UHF Public Safety Frequencies in Minnesota*, Public Notice, 33 FCC Rcd 1789 (WTB MD 2018).

¹⁶ *See* South Metro Fire Department Comments (filed Mar. 8, 2018); EWA Comments (filed Mar. 16, 2018); American Petroleum Institute (API) Comments (filed Mar. 16, 2018); National Association of Manufacturers and (continued....)

support of the request.¹⁷ Only the Association of Public-Safety Officials-International, Inc. (APCO) opposes the request.¹⁸

III. DISCUSSION

6. Section 1.925 of the Commission's rules states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) 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.¹⁹ The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁰ We conclude that Flint Hills Resources has demonstrated that relief is warranted under the first prong of the waiver standard.

7. The purpose of allocating spectrum between the I/B and PS Pools is to ensure that adequate spectrum is available for each service category, and to avoid interference from incompatible services.²¹ Grant of the instant request is consistent with that purpose, for the grant would have little or no impact on the PS Pool given the low number of PS Pool channels requested and the limited coverage area in which they would be used.²² Flint Hills Resources has confined its request for waiver to the minimum number of PS channels covering the smallest possible area, only after its frequency coordinator confirmed there are not enough I/B channels available for TETRA operations at the refinery. That the fire departments in nearby communities support the request demonstrates that they do not believe that the proposed operations will create congestion or interference on PS Pool channels.

8. We also conclude that grant of the requested waiver would be in the public interest. Reliable communication is essential for critical infrastructure industry entities like Flint Hills Resources.²³ Flint Hills Resources needs to upgrade its radio system in order to ensure safe, reliable communications, which will promote the safety of its workers and of people in neighboring communities that could be affected by an incident at the refinery.²⁴ A grant of the request for waiver will permit Flint Hill Resources to provide

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MRFAC, Inc. Reply Comments (filed Mar. 29, 2018). The comments and reply comments are viewable in the Commission's Universal Licensing System under File Number 0008061316.

¹⁷ See Request at Attachment A.

¹⁸ See APCO Comments (filed Mar. 16, 2018). EWA and Flint Hills Resources filed reply comments in response to APCO's comments.

¹⁹ See 47 CFR § 1.925(b)(3).

²⁰ See *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

²¹ *State of Michigan*, Order, 30 FCC Rcd 10054, 10057, para. 11 (PSHSB PLD 2015); 13387, *County of Sandoval, New Mexico*, Order, 28 FCC Rcd 13385, 13387, para. 7 (PSHSB PLD 2013) (*Sandoval*).

²² See *Sandoval*, 28 FCC Rcd at 13387-88, para. 9.

²³ *Arizona Public Service Co.*, Order, 32 FCC Rcd 9437, 9440, para. 7 (WTB MD 2017) (citing *Spectrum Polity Task Force Seeks Comment on Issues Related to Commission's Spectrum Policies*, Public Notice, 17 FCC Rcd 10560, 10565 (2002)).

²⁴ *Id.*; API Comments at 1.

a highly reliable, interference-free communications system which is critical in its daily operation and will assist in its fire protection duties on-site and in support of neighboring communities.

9. APCO asserts that grant would be contrary to the public interest because Flint Hills Resources will, after the transition to the new system, cancel its authorization for any I/B channels that it no longer needs, and this will “leav[e] spectrum that was not reserved for public safety fallow.”²⁵ We disagree. Flint Hills Resources cannot simply repurpose its existing I/B Pool channels for its TETRA system (even if those channels were appropriate for TETRA operations), because refinery operations will continue during the transition. Consequently, additional spectrum is needed to implement the new system without creating unnecessary risks by degrading the current system. After the transition, Flint Hills Resources will surrender existing channels that it no longer needs, but we note that almost all of its current channels are licensed on a non-exclusive basis shared with other users, so it is not reasonable to assume the canceled channels will go unused.

IV. ORDERING CLAUSES

10. 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 Flint Hills Resources Pine Bend, LLC in connection with application FCC File No. 0008061316 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission’s rules.

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

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²⁵ APCO Comments at 3.