

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

In the Matter of)
)
FLINT HILLS RESOURCES CORPUS) File Nos. 0008695770 and 0008695803
CHRISTI, LLC)
)
Requests for Waiver of 900 MHz Application)
Freeze)

ORDER

Adopted: September 12, 2019

Released: September 12, 2019

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

1. Introduction. In this Order, we address the above-captioned applications filed by Flint Hills Resources Corpus Christi, LLC (FHR),¹ for 896-901/935-940 MHz (900 MHz) band Business/Industrial/Land Transportation channels and associated requests for waiver of the current 900 MHz application freeze.² For the reasons discussed herein, we grant FHR’s waiver requests as conditioned below and will process the applications.

2. Background. FHR is a refining, chemical, and biofuel company that employs a 900 MHz radio system for day-to-day and emergency communications at its three facilities in Corpus Christi, Texas.³ In addition, the 900 MHz system is used for emergency communications by the Refinery Terminal Fire Company, a non-profit private cooperative that protects 55 local facilities.⁴ FHR’s system is licensed for a total of 33 channels at four sites.⁵

3. In September 2018, the Wireless Telecommunications Bureau announced a temporary freeze on the acceptance of applications for new or expanded use of 900 MHz band frequencies.⁶ The purpose of the freeze is to preserve the current landscape of authorized operations in the 900 MHz band pending Commission action as part of its inquiry into potential rule changes to promote next-generation technologies and services in the band.⁷ The Public Notice noted that licensees have recourse via the Commission's waiver provisions to request an exception to the freeze.⁸ In March 2019, the Commission

¹ See FCC File Nos. 000856995770 and 0008695803 (both filed June 18, 2019), Request for Waiver of Application Freeze (Waiver Request), Supplement to Waiver Request (filed Aug. 22, 2019) (Supplement).

² See Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum, Public Notice, 33 FCC Rcd 8735 (WTB 2018) (Freeze Public Notice), recon. pending.

³ See Waiver Request at 1-2.

⁴ Id. at 2.

⁵ Id.; see Call Signs WQAW222, WQBJ582, WPLX984, and WQUN818.

⁶ See Freeze Public Notice, 33 FCC Rcd at 8735-36.

⁷ Id. at 8735 (citing Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band, Notice of Inquiry, 32 FCC 6421 (2017)).

⁸ See id. at 8736, n.4.

the Commission released a *Notice of Proposed Rulemaking* proposing to realign the 900 MHz band to create a 3/3 megahertz broadband segment, while reserving the remaining 2/2 megahertz of spectrum for narrowband operations.⁹

4. FHR states that its legacy narrowband 900 MHz system relies on equipment and software that have been discontinued and are no longer supported by the manufacturers and that it has enough spare equipment to keep its network operational only through the end of 2019.¹⁰ FHR therefore proposes to replace the legacy system with a new 900 MHz system, which it plans to implement in parallel with the existing system in order to ensure uninterrupted service.¹¹ In June 2019, FHR filed applications for a total of 33 900 MHz channels at the same locations where it currently is licensed, and it requested a waiver of the 900 MHz application freeze.

5. Most of FHR's current 900 MHz narrowband channels are located in the 3/3 megahertz segment that would transition to broadband use under the Commission's proposal. All of the new channels requested by FHR would be located in the segments that would continue to be used for narrowband operations under the Commission's proposal. FHR argues that grant of its applications and waiver requests would eliminate the need to re-build its communications system twice, first due to its age and then due to realignment of the 900 MHz band.¹² It states that it will return all 33 currently licensed 900 MHz channels to the Commission after it transitions to the new system.¹³

6. FHR states that it considered other frequency bands for its replacement communications system but found that UHF frequencies do not provide adequate signal coverage and penetration throughout its facilities.¹⁴ In addition, 800 MHz band frequencies in the Corpus Christi area are subject to the application freeze in National Public Safety Planning Advisory Committee regions along the U.S.-Mexico border.¹⁵ FHR also considered procuring service from a commercial provider, but concluded that the risk of dropped service and delayed communication rendered this option unsuitable for critical communications.¹⁶

7. *Discussion.* 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 present case, and that a grant of the 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

⁹ See *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019) (*900 MHz NPRM*). The Commission proposed to designate 897.5-900.5 MHz/936.5-939.5 MHz as the broadband segment, leaving two separate narrowband segments: a 1.5/1.5 megahertz segment (896-897.5/935-936.5 MHz) below the broadband segment and a .5/.5 megahertz segment (900.5-901/939.5-940 MHz) above the broadband segment.

¹⁰ See Waiver Request at 3, 6; Supplement at 1, Attachment A (documentation of Motorola's cancellation of Trident Legacy products and of discontinuance of support for Kenwood radios).

¹¹ See Waiver Request at 6-7.

¹² See *id.* at 4.

¹³ See *id.*

¹⁴ See Supplement at 2.

¹⁵ See *Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze along Border with Mexico*, Public Notice, 32 FCC Rcd 1817, 1819 (PSHSB 2017).

¹⁶ See Supplement at 2-3; see also, e.g., *900 MHz NPRM*, 34 FCC Rcd at 1552, 1557, paras. 5, 18 (noting commenters' statements that consumer-oriented wireless carriers do not provide sufficient coverage, connectivity, and reliability for critical infrastructure industries).

alternative.¹⁷ We conclude that FHR has met the first prong of the waiver standard and its requests should be granted, as conditioned below.

8. The purpose of the 900 MHz application freeze is to preserve the current landscape of authorized operations in the band while the Commission considers potential rule changes.¹⁸ Because FHR will cancel its existing 900 MHz licenses after the new system is operational, the effect on the 900 MHz licensing landscape will be limited, and ultimately there will be no net increase in 900 MHz channels held by FHR as a result of granting these waiver requests. Thus, the purpose of the freeze would not be served by application to the present case.

9. In addition, grant of the waiver requests is in the public interest. FHR needs to replace its radio system by the end of this year in order to ensure safe, reliable communications, including emergency communications for fire protection services, which will promote the safety of its workers and of people in neighboring communities that could be affected by an incident at its facilities.¹⁹ During the transition period, functionality must be ensured for both the old and new systems.²⁰

10. We grant the requests on the express condition that FHR cancel its licenses for Stations WQAW222, WQBJ582, WPLX984, and WQUN818 by December 31, 2019, the date by which FHR indicates that its legacy system would need to be replaced.²¹ A failure to cancel the existing licenses as required shall constitute a failure to meet a condition of the licenses granted pursuant to the above-captioned applications and thus grounds for declaring that the licenses granted pursuant to the above-captioned applications terminated. Failure to meet this condition may also result in monetary sanctions or other enforcement action by the Commission.

11. Accordingly, IT IS ORDERED, 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, that the Requests for Waiver of Application Freeze filed on June 18, 2019, by Flint Hills Resources Corpus Christi, LLC, in connection with applications FCC File Nos. 0008695770 and 0008695803 ARE GRANTED ON THE CONDITION set forth in paragraph 10 and applications FCC File Nos. 0008695770 and 0008695803 SHALL BE PROCESSED in accordance with this decision and the Commission's rules.

12. 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

¹⁷ 47 CFR § 1.925(b)(3).

¹⁸ See *Freeze Public Notice*, 33 FCC at 8735.

¹⁹ See, e.g., *Flint Hills Resources Pine Bend, LLC*, Order, 34 FCC Rcd 300, 302, para. 8 (WTB MD 2019) (*FHR Pine Bend*); *Arizona Public Service Co.*, Order, 32 FCC Rcd 9437, 9440, para. 7 (WTB MD 2017).

²⁰ *FHR Pine Bend*, 34 FCC Rcd at 303, para. 9.

²¹ See Waiver Request at 3, 6; Supplement at 1, Attachment A.