



Federal Communications Commission
Washington, D.C. 20554

January 21, 2020

DA 20-90

Paul Feldman
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Dear Mr. Feldman:

This letter addresses the December 3, 2019 request¹ filed on behalf of Flint Hills Resources Corpus Christi, LLC (FHR) seeking a modification of the waiver granted on September 12, 2019 by the Wireless Telecommunications Bureau's (Bureau) Mobility Division (Division) regarding the current 900 MHz application freeze.² For the reasons set forth below, we grant FHR's request.

In September 2018, the Bureau announced a temporary freeze on the acceptance of applications for new or expanded use of 900 MHz band frequencies.³ 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.⁴

In June 2019, FHR requested a waiver of the 900 MHz freeze to file applications for 33 channels in the 900 MHz narrowband segment for use in its updated system.⁵ FHR stated that its legacy narrowband 900 MHz system relies on equipment and software that are no longer manufacturer-supported and can only remain operational with spare equipment through the end of 2019.⁶ On September 12, 2019, the Division granted FHR a waiver, finding that the purpose of the freeze and the public interest was served by permitting FHR to replace its radio system to ensure safe, reliable communications, including emergency services, while requiring FHR to cancel its legacy system licenses, resulting in no net spectrum increase to FHR.⁷ The waiver was granted on the condition that FHR cancel the existing

¹ Request for Modification of Waiver of Application Freeze, File Nos. 0008695770 and 0008695803, at 1 (filed Dec. 3, 2019 and supplemented Dec. 12, 2019) (*Flint Hills Modification Request*).

² Flint Hills Resources Corpus Christi, LLC Requests for Waiver of 900 MHz Application Freeze, File Nos. 0008695770 and 0008695803, Order, 34 FCC Rcd 8071, para. 10 (WTB Sept. 12, 2019) (*Flint Hills Order*).

³ 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*).

⁴ *Id.* (citing *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, Notice of Inquiry, 32 FCC 6421 (2017)). The *Public Notice* noted that licensees have recourse via the Commission's waiver provisions to request an exception to the freeze. *Id.*

⁵ See Flint Hills Resources Corpus Christi, LLC Request for Waiver of Application Freeze, FCC File Nos. 0008695770 and 0008695803 (filed June 18, 2019) (*Flint Hills Waiver Request*).

⁶ See *Flint Hills Waiver Request* at 3, 6.

⁷ See *Flint Hills Order*, 34 FCC Rcd 8071.

licenses by December 31, 2019,⁸ the date FHR originally indicated it would implement the new system in parallel with its existing system to ensure uninterrupted service.⁹

In the instant request, FHR states that its equipment supplier delayed delivery of the radio building housing FHR's infrastructure equipment from its original promised date of November 11, 2019 to an actual delivery date of December 10, 2019,¹⁰ causing additional construction delays and preventing FHR from meeting the December 31, 2019 license cancellation deadline.¹¹ FHR therefore requests until March 10, 2020 to cancel the legacy licenses.¹²

We grant FHR's request and find that the purpose of the 900 MHz freeze to preserve the current landscape of authorized operations in the band would not be served by denying relief in this case. FHR acted with diligence to meet the waiver condition and has continued to make substantial progress towards constructing its parallel system despite equipment supplier delay in delivery,¹³ including constructing at sites other than the affected West Site and performing preliminary equipment function tests in nearby staging areas.¹⁴ We find that affording additional time until March 10, 2020 to cancel its licenses is in the public interest and will help ensure safe, reliable communications, including emergency communications for fire protection services.¹⁵ Moreover, granting FHR additional time until March 10, 2020 will afford FHR approximately 180 days to construct following the Division's grant of its initial waiver request on September 12, 2019. This timeframe is consistent with the 180-day period that the Bureau afforded licensees to construct after grant of applications to relocate to 900 MHz narrowband frequencies, which the Bureau permitted in certain circumstances when it modified the 900 MHz freeze, subsequent to the *Flint Hills Order*.¹⁶

We grant FHR's request and modify the prior waiver grant on the express condition that FHR cancel its licenses for Stations WQAW222, WQBJ582, WPLX984, and WQUN818 by March 10, 2020. A failure to timely cancel the existing licenses as required shall constitute a failure to meet a condition of the grant of call signs WREB811 and WREB813 and thus grounds for declaring that the licenses

⁸ *Id.* at 8071, para. 10.

⁹ *Flint Hills Modification Request* at 1.

¹⁰ See Supplement to Waiver Request, FCC File Nos. 000856995770 and 0008695803, at 1 (filed December 12, 2019) (Supplement).

¹¹ *Flint Hills Modification Request* at 1; Supplement at 1.

¹² *Flint Hills Modification Request* at 1-3. Specifically, FHR states that the following additional delays in construction have resulted from the delay in the building's delivery: (1) the purchased radio system equipment cannot be loaded into the building; (2) electrical infrastructure tie-ins to the building cannot be made; and (3) antenna coax infrastructure tie-ins to the building cannot be made.

¹³ *Id.* at 1-2.

¹⁴ Supplement at 1. Delay in building delivery resulted in inability to load the radio system and perform electrical infrastructure and antenna coax infrastructure tie-ins. *Id.*

¹⁵ 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).

¹⁶ See *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band, pdvWireless, Inc. d/b/a Anterix, Request for Modification of 900 MHz Temporary Filing Freeze*, DA 19-1025, Order, 34 FCC Rcd 9369, 9371, para. 7 (WTB 2019) (*900 MHz Freeze Modification Order*).

terminated. Failure to meet this condition may also result in monetary sanctions or other enforcement action by the Commission.

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 request to modify the waiver granted on September 12, 2019 in DA 19-908, as set forth in the Request for Modification of Waiver of Application Freeze filed on December 3, 2019, by Flint Hills Resources Corpus Christi, LLC, in connection with call signs WREB811 and WREB813, IS GRANTED.

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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau