

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Flint Hills Resources ) File No. 0008061316  
Request for Waiver to License )  
UHF Public Safety Channels )  
In Minnesota )  
  
To: Chief, Wireless Telecommunications Bureau

**COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its response to the Public Notice seeking comment on the Waiver Request (“Waiver Request”) filed by Flint Hills Resources Pine Bend, LLC (“FHR” or “Flint Hills”) to use three UHF channels allocated for Public Safety (“PS”) entities at its oil refinery in Rosemount, Minnesota.<sup>1</sup> EWA coordinated the Flint Hills application and supports its Waiver Request as consistent with the Commission’s commitment to ensuring that all spectrum is placed into productive use by entities with a demonstrated need for wireless communications facilities.

**1. THE FLINT HILLS COORDINATION PROCESS**

As described in the Public Notice, FHR operates one of the largest oil refineries in the United States. It stated in its Waiver Request that it employs some 1,300 full-time workers and brings in thousands of temporary personnel for specific projects. It explained that because

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<sup>1</sup> Wireless Telecommunications Bureau Seeks Comment on Flint Hills Resources Pine Bend, LLC, Request for Waiver to License UHF Public Safety Channels in Minnesota, *Public Notice*, File No. 0008061316, DA 18-148 (rel. Mar. 16, 2018) (“Public Notice”).

reliable communications are essential in a facility where safety considerations are paramount, it must replace its aging analog system that is no longer supported by its vendor. It investigated a number of technology alternatives and determined that the propagation, spectrum efficiency, and competitive vendor options of a UHF Terrestrial Trunked Radio (“TETRA”) system represented the best combination of wireless characteristics for its refinery.

Flint Hills asked EWA to investigate the availability of UHF Industrial/Business (“IB”) channels that could be licensed for FB8 status, which is essential in a TETRA system that does not offer monitoring capability. That analysis considered all such channels, including the shared channels for which FHR is currently licensed. Although the coverage of the proposed system is limited to the 8-by-10-kilometer operating area needed, and any channel would be used at only one of the two sites required to provide reliable coverage in this very challenging wireless environment, the Alliance was able to identify only a single channel that qualified for use in a TETRA system.<sup>2</sup>

EWA then analyzed UHF channels assigned for PS use and found three that could be deployed at what is identified as Loc. 1 in the Flint Hills application. The applicable PS frequency advisory committees (“FACs”) have acknowledged that these channels are unassigned and that their use in this very limited operating area would not cause interference to any PS licensees.<sup>3</sup>

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<sup>2</sup> The FHR application proposes to use that channel at Loc. 2. As explained in the Waiver Request, FHR has purchased five Part 22 UHF channels that also will be deployed at Loc. 2.

<sup>3</sup> Although the PS FACs continue to question why FHR’s existing channels cannot be repurposed for this use, the documentation supporting EWA’s determination is fully comparable to the documentation typically provided by PS FACs when seeking the use of IB channels on the basis that no PS spectrum is available.

## 2. THE WAIVER REQUEST SUPPORTS FHR'S USE OF PS CHANNELS

There is no question that Flint Hills needs new wireless capability to replace its no-longer-supported analog system. FHR explained why it has selected TETRA to meet the very demanding requirements of a refinery complex with multiple buildings and other obstructions that makes reliable communications both essential and difficult to achieve.<sup>4</sup> It has designed a system that will confine its spectrum utilization to the smallest possible coverage, consistent with operating requirements, by severely limiting its power and using highly directional antennas with significant down-tilt. It is proposing only a small number of channels at each of its two stations and has purchased Part 22 channels as part of its spectrum solution. It directed EWA to investigate UHF PS channels only after the Alliance had determined that there was only a single usable I/B channel.

The Waiver Request also described Flint Hills' fire protection responsibilities, both at the refinery and in support of surrounding communities. It explained that FHR maintains its own fire crew and equipment that are used to address fire emergencies at its own facility, thereby relieving neighboring jurisdictions of this responsibility. It also has mutual aid arrangements with fire and EMS departments in nearby towns, several of which filed letters in support of grant of the Waiver Request. Additionally, FHR works with the U.S. Coast Guard because of the refinery's proximity to the Mississippi River. While not technically a PS eligible entity, Flint Hills is actively engaged in first responder activities on a daily basis.

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<sup>4</sup> As was the case with Flathead County, Montana's use of VHF Project 25 equipment, the TETRA technology to be used by Flint Hills "is accepted world-wide and is the product of decades of developmental effort." County of Flathead, Montana, File No. 000596877, *Order*, 30 FCC Rcd 1152 (PSHSB 2015) "Flathead County").

The Commission has recognized in analogous situations that “Section 90.175 of the Commission’s rules ‘does not differentiate between PS and IB applicants.’ Rather, the rule requires FACs to recommend the ‘most appropriate frequency,’ with no express limitation to the spectrum pool for which the applicant is eligible.”<sup>5</sup> It has granted a number of waivers allowing PS entities to use IB spectrum upon a showing that (i) there are no usable PS channels, (ii) the IB channels “avoid or minimize interference to other users, and (iii) the waiver request satisfies the Commission’s established waiver standards.”<sup>6</sup>

The FHR Waiver Request meets these three criteria. EWA has certified – and documented – that there are no IB channels that can be used at Loc. 1 in the proposed system. PS FACs have acknowledged that the PS channels are available and will not cause interference to incumbent PS systems. Flint Hills has explained grant of the request is in the public interest as it is essential to the safe and efficient operation of this major U.S. refinery, it will support FHR’s fire-fighting responsibilities, and there is no reasonable alternative to FHR’s use of these three PS channels.

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<sup>5</sup> Letter to Mark E. Crosby, CEO, Enterprise Wireless Association, William K. Brownlow, Chair, Public Safety Communications Council, from David G. Simpson, Rear Admiral, USN (Ret.), Chief Public Safety and Homeland Security Bureau, and Roger C. Sherman, Acting Chief, Wireless Telecommunications Bureau, Letter, 29 FCC Rcd 250 (PSHSB and WTB 2014) (“Crosby Letter”).

<sup>6</sup> Crosby Letter at 3-4. *See, e.g.*, Flathead County; West Virginia Department of Health and Human Resources / Bureau of Public Health/State Office of Emergency Medical Services, *Order*, 28 FCC Rcd 7089 (PSHSB 2013); City of Augusta, Maine, *Order* 28 FCC Rcd. 4706 (PSHSB 2013); State of Maine, *Order*, 28 FCC Rcd 988 (PSHSB 2013); Shelby County, Alabama, *Order*, 27 FCC Rcd. 388 (PSHSB 2012); City of Los Angeles, *Order*, 23 FCC Rcd 8720 (PSHSB 2008).

For these reasons, EWA urges the FCC to proceed promptly in granting the waiver relief requested by the Company.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

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### File Number(s)/Call Sign(s)

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