

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

In the Matter of)
)
Flint Hills Resources Pine Bend, LLC Request for) File No. 0008061316
Waiver to License UHF Public Safety Channels in)
Minnesota)

COMMENTS OF APCO INTERNATIONAL

The Association of Public-Safety Communications Officials-International, Inc. (APCO)¹ submits the following comments in response to the Wireless Telecommunications Bureau’s Public Notice in the above-captioned proceeding.² The Bureau seeks comment on a request of Flint Hills Resources Pine Bend, LLC (Flint Hills) to waive the eligibility requirements of Section 90.20 in order to license three UHF Public Safety Radio Pool Channels for use in its radio system in Minnesota.³ Flint Hills has failed to demonstrate that a waiver of the eligibility requirements would serve the public interest, and the request should therefore be denied.

The Commission may grant a request for waiver if it is shown that: “(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that 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

¹ Founded in 1935, APCO is the nation’s oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 30,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including Public Safety Answering Points (PSAPs), dispatch centers, emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies.

² Wireless Telecommunications Bureau Seeks Comment on Flint Hills Resources Pine Bend, LLC, Request for Waiver to License UHF Public Safety Channels in Minnesota, File No. 0008061316, *Public Notice*, DA 18-148 (Wireless Telecommunications Bur. rel. Feb. 14, 2018) (“Notice”).

³ *Id.* at 1-2.

reasonable alternative.”⁴ Fundamentally, Flint Hills fails to demonstrate that it has no reasonable alternatives and that waiver would serve the public interest.

Flint Hills appears to have reasonable alternatives. It already holds licenses for UHF I/B frequencies in the area where it intends to deploy its new radio system.⁵ The problem apparently is that Flint Hills’ current UHF channels (or others in use) cannot be licensed on an exclusive basis due to the presence of co-channel or adjacent channel licenses, and Flint Hills prematurely selected equipment, 450 MHz TETRA, that cannot operate on shared channels.⁶ A waiver of the eligibility rules cannot be justified in this situation, as the Commission’s rules expressly caution against purchasing radio equipment operating on specific frequencies until a valid authorization has been obtained.⁷ Further, Flint Hills fails to indicate whether it even attempted to obtain letters of consent from the relevant co-channel or adjacent channel licensees, as the rules contemplate, or why doing so is not a reasonable alternative to taking spectrum from the public safety pool.⁸ Perhaps most confounding is that according to the waiver request, Flint Hills actually anticipates having more spectrum than it needs if it receives permission to operate on public safety pool channels.⁹ APCO fails to understand how Flint Hills claims it needs waiver relief to access public safety pool channels when it not only has its own I/B pool licensed spectrum but intends to lay this spectrum to waste because it doesn’t suit its operational preferences.

⁴ 47 C.F.R. § 1.925(b).

⁵ Request for Waiver of Flint Hills Resources Pine Bend, LLC, File No. 0008061316, at 2 (filed Jan. 12, 2018) (“Waiver Request”). According to ULS, Flint Hills holds 21 I/B conventional UHF licenses and one I/B trunked UHF license.

⁶ *Id.* at 2-3.

⁷ 47 C.F.R. § 90.175(h).

⁸ *See* 47 C.F.R. § 90.187(d). As Flint Hills adds, its proposal is for a “very limited area of operation” with repeaters operating “at 5 watts ERP with highly directional antennas only 41 feet above the ground.” Waiver Request at 3. This would further lend support to the prospect of obtaining any needed consents to use its own or other I/B licensed frequencies.

⁹ Waiver Request at 2-3, n. 6.

Flint Hills also has other reasonable options to satisfy its desired operations, rather than use public safety channels at this location. Indeed, as Flint Hills describes, it will deploy its Part 22 channels, as well as the only I/B channel it claims can be used, at its South Site (Loc. 2).¹⁰ Flint Hills offers no explanation for why it cannot deploy the same I/B channel and Part 22 channels at its North Site (Loc. 1).¹¹

Flint Hills has not demonstrated that it meets the Commission's waiver criteria. The waiver request fails to address a number of reasonable alternatives: seeking to obtain co-channel or adjacent channel consents to accommodate its limited area of operation; reusing the same frequencies at both of its locations; or acquiring other spectrum such as additional Part 22 channels. Further, grant of the waiver would be contrary to the public interest because as Flint Hills plainly admits, upon grant it would cancel some current licenses, leaving spectrum that was not reserved for public safety fallow. Flint Hills selected equipment that limited its options, and while it may be more convenient to discard its own spectrum and seek a waiver to use public safety channels, permitting this would set a dangerous precedent. Therefore, the Bureau should deny Flint Hills' Request for Waiver.

Respectfully submitted,

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¹⁰ *Id.* at 2, n. 5.

¹¹ *Id.*

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