

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

In the Matter of	)	
	)	
FELHC, Inc. et al. Request for Extension	)	WT Docket No. 17-201
Or Waiver of 700 MHz Guard Band	)	
Performance Requirement	)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS  
OF  
PDVWIRELESS, INC.**

pdvWireless, Inc. (“PDV” or the “Company”), 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 Request for an Extension or Waiver of Substantial Service Requirement (“Extension Request”) filed jointly by FELHC, Inc. (“FELHC”), the license-holding subsidiary of FirstEnergy Corp. (“FE”), and BPC Spectrum LLC, Dominion 700, Inc., and Access 700, LLC (collectively, the “Licensees”).<sup>1</sup> The Extension Request asks that the FCC extend until December 31, 2022 the current June 13, 2019 deadline for demonstrating that the partitioned Upper 700 MHz A Block spectrum being acquired by FELHC from the Licensees has been constructed in compliance with the substantial service standard of Rule Section 27.14(a). Alternatively, the parties seek a waiver of the current construction deadline, with a new deadline of December 31, 2022. For the reasons detailed below, PDV agrees that the showing presented by FELHC amply justifies either the construction deadline extension requested or a waiver of that rule.

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<sup>1</sup> Wireless Telecommunications Bureau Seeks Comment on FELHC, Inc. et al. Request for Extension or Waiver of 700 MHz Guard Band Performance Requirement, *Public Notice*, WT Docket No. 17-201, DA 17-743 (rel. Aug. 7, 2017) (“Public Notice”).

## **I THE EXTENSION REQUEST**

The Extension Request explains that FE is one of the nation's largest investor-owned electric systems. In response to escalating changes in the telecommunications environment, including the retirement of analog copper communications facilities and the need to replace narrowband radio systems with technology that has the capacity to address the majority of its operational needs,<sup>2</sup> in particular an increased demand for data capabilities such as smart-grid facilities and security from cyberattack, FE undertook a multi-year search for spectrum suitable for its complex purposes and extensive geographic scope.<sup>3</sup>

The search for an upgrade solution was defined by a need to obtain licensed spectrum<sup>4</sup> with the required "range, propagation, bandwidth, and latency characteristics required for electric utility applications to support the reliability, resiliency, performance, and efficiency of the electric power grid."<sup>5</sup> FE ultimately elected to purchase the 700 MHz Guard Band spectrum at issue herein, noting that "the limited availability of licensed spectrum suitable for utilities has been identified as a key obstacle to their ability to deploy smart grid networks and other advanced communications-based technologies."<sup>6</sup>

PDV recognizes the serious challenge faced by utilities, other Critical Infrastructure Industry ("CII") entities, and private enterprise ("PE") users seeking licensed spectrum in a band that can support cost-effective advanced telecommunications capabilities with coverage, reliability, security, and other features that are not always available on commercial networks. It

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<sup>2</sup> The Extension Request identifies five categories of operations that are essential to FE's operating and business functions, including monitoring and control of electrical infrastructure: voice, data, SCADA/EMS, two-way radio, and transport communications. Extension Request at 6.

<sup>3</sup> FE has a service territory of 67,000 square miles, much of which is rural and in mountainous terrain. Extension Request at 9.

<sup>4</sup> The Extension Request explains that an increasing level of interference on unlicensed Part 15 spectrum dictated that its replacement system be deployed on licensed spectrum. Extension Request at 4 and 8.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.*, citing Connecting America: The National Broadband Plan at 251 (2010) and Utilities Telecom Council, The Utility Spectrum Crisis: A Critical Need to Enable Smart Grids (Jan. 2009).

is precisely this need that prompted PDV to file jointly with the Enterprise Wireless Alliance the Petition for Rulemaking proposing to bifurcate the Part 90 900 MHz band into a broadband, as well as narrowband, segment, and create a private carrier broadband network that would collaborate with CII and PE entities in the deployment of build-to-suit facilities designed to their exacting specifications.<sup>7</sup> That proposal is still under consideration by the FCC.<sup>8</sup> The 3.65 GHz band had been available for CII use, but now is being repurposed as part of the Citizens Broadband Radio Service.<sup>9</sup> Utilities had proposed that eligibility in the 4.9 GHz band be expanded beyond public safety to include CII users, but the Commission has not yet adopted a Further Notice of Proposed Rulemaking in that proceeding, and the future use of that band is uncertain.<sup>10</sup> Both bands also have distinctly less favorable propagation characteristics than either 700 MHz or 900 MHz.

Given the very limited options available to address its critical communications needs, FE is to be commended for identifying and committing to purchase partitioned geographic spectrum that will satisfy the majority of its requirements. That business decision is challenging, not only economically, but because utilities and other CII/PE users have service areas that do not align neatly with the geographic areas in which the Commission typically auctions spectrum. As evidenced by the instant Extension Request, piecing together the needed spectrum from multiple geographic licensees is not a simple or quick process. Because FELHC took the initiative to do so and has demonstrated the unquestionable intention of putting this spectrum into productive

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<sup>7</sup> Petition for Rulemaking of the Enterprise Wireless Alliance and Pacific DataVision, Inc., RM-11738 (filed Nov. 17, 2014).

<sup>8</sup> See Review of the Commission's Rules Governing the 896/901-935-940 MHz Band, WT Docket No. 17-200, *Notice of Inquiry*, DA 17-743 (rel. Aug. 4, 2017).

<sup>9</sup> See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354, *Report and Order and Second Further Notice of Proposed Rulemaking*, 30 FCC Rcd 3959 (2015).

<sup>10</sup> See Public Safety and Homeland Security Bureau Seeks Comment on National Public Safety Telecommunications Council's 4.9 GHz National Plan Recommendations Final Report, *Public Notice*, DA 13-2096 (PSHSB rel. Oct. 30, 2013) (*Public Notice*).

use as promptly as possible to serve the electric needs of its customers, PDV recommends that the Commission support FELHC's effort by granting the relief requested.

## **II FELHC HAS SATISFIED BOTH THE SECTION 1.946(e) RULE FOR EXTENDING A CONSTRUCTION DEADLINE AND THE SECTION 1.925 WAIVER STANDARD**

The FCC's construction deadlines serve a vital public interest purpose: they ensure that valuable, limited spectrum, even spectrum purchased at auction, is not stockpiled, but is placed into operation within a reasonable period. However, FCC Rule Section 1.946 provides a safety valve for construction extensions under appropriate circumstances.

In this instance, the parties have sought relief almost two years before the deadline with a detailed explanation of FELHC's plan for deployment.<sup>11</sup> This is not a situation where a last-minute buyer is seeking more time to construct, having purchased the spectrum just prior to a build-out deadline. FE has been demonstrably diligent in searching for spectrum that can satisfy its requirements and has a migration plan that recognizes both the FCC's desire to have the spectrum placed into operation as quickly as possible and the highly sensitive process of upgrading a system of the size and complexity of FE's without compromising the obligation to provide 24/7 reliable electric service to its many millions of customers.<sup>12</sup> Denial of this request would serve no public interest purpose.

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<sup>11</sup> Extension Request at 10-12.

<sup>12</sup> This situation is easily distinguished from the SAL Spectrum, LLC ("SAL") request denied by the FCC on August 14, 2017. See Letter to Douglas Minster, SAL Spectrum, LLC, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, DA 17-764. FELHC requested relief two years prior to the date by which it otherwise would need to demonstrate "substantial service." The system it is deploying will cover 118 counties in 10 Major Economic Areas and must be integrated seamlessly with the ongoing operation of one of the nation's largest utilities. The Commission has long recognized that certain private internal systems, those of unusual size and/or complexity, may require more than the normal period in which to complete construction. See 47 C.F.R. § 90.629. The scale of FELHC's undertaking would justify an extended construction period under that standard.

Alternatively, FELHC also satisfies both prongs of the Commission's requirements for waiver relief under Section 1.925(b)(3):

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 reasonable alternative.

The purpose of the FCC's construction requirements is to promote the timely deployment of spectrum in the public interest. Denying FELHC additional time to demonstrate that it is making substantial use of the spectrum in question, consistent with its parallel responsibility of delivering reliable electric service to the public, would frustrate that purpose and ill-serve the public interest.<sup>13</sup>

The Extension Request also describes in ample detail the fact FELHC has no reasonable alternative to seeking additional time to deploy this spectrum over FE's extensive service area while maintaining full electrical operational capabilities. This unusual factual situation is an excellent example of an instance in which the build-out requirements designed primarily for commercial wireless networks would be unduly burdensome for a licensee such as FELHC that is upgrading a private internal communications network. A rigid application of the current construction deadline would not serve the public interest in this instance.

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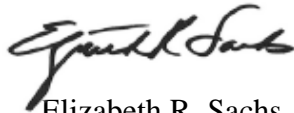
<sup>13</sup> PDV also supports FELHC's request to use device-based coverage as a proxy for calculating coverage to the population within its service area. Extension Request at 18-20.

### **III CONCLUSION**

For these reasons, PDV urges the FCC to proceed promptly in granting the waiver relief requested by FELHC and the Licensees.

Respectfully submitted,

**PDVWIRELESS, INC.**

A handwritten signature in black ink, appearing to read "Elizabeth R. Sachs".

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August 16, 2017

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, LaFuria, Gutierrez & Sachs, LLP, hereby certify that I have, on this 16<sup>th</sup> day of August 2017, caused to be forwarded via first-class mail, postage prepaid, the foregoing Comments to the following:

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