

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

In the Matter of)
Texas Eastern Communications, Inc.) FCC File No. 0000112721
Application to Modify the Facilities of)
Station WNTQ319, Houston, Texas)

ORDER

Adopted: November 22, 2000

Released: November 30, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On April 20, 2000, Texas Eastern Communications, Inc. (Texas Eastern) submitted the above-captioned application to modify its license for Station WNTQ319, Houston, Texas,¹ accompanied by a request for waiver of the Commission's Rules regarding the 928/959 MHz Multiple Address Systems (MAS) frequency band (Waiver Request). Texas Eastern seeks to modify the facilities for Station WNTQ319, specifically requesting to change the station's antenna polarization from vertical to horizontal.² For the reasons set forth below, we grant the Waiver Request and will process the associated application.

2. *Background.* On February 27, 1997, the Commission initiated a comprehensive examination of the MAS service, seeking comment on a variety of issues, including the current and potential uses of MAS, modifications designed to streamline MAS licensing procedures to better accommodate such uses, spectrum allotment, and licensing.³ In the *Notice*, the Commission proposed to designate the 928/959 MHz bands for subscriber-based services, and temporarily suspended the acceptance and processing of applications, including major modifications, for the 928/959 MHz band.⁴ The Commission concluded that a suspension of the acceptance of applications in this band would permit the orderly and effective resolution of the issues in the proceeding and noted that applications for the 928/959 MHz MAS band might limit the effectiveness of the decisions made in the proceeding.⁵

3. In the subsequent *Report and Order* in the MAS proceeding, the Commission modified the licensing approach for 928/959 MHz MAS spectrum from site-based to geographic area, indicating that

¹ Texas Eastern is currently authorized to operate on 928.86875 and 959.86875 MHz.

² Waiver Request at 1.

³ See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making*, WT Docket No. 97-81, 12 FCC Rcd 7973 (1997) (*Notice*).

⁴ *Id.* at 8003-04 ¶¶ 68-71. The Commission indicated that it would continue to accept applications for minor modifications.

⁵ *Id.*

this new licensing approach would best accommodate the current and future uses of the band.⁶ The Commission also grandfathered the existing MAS incumbents in the 928/959 MHz band,⁷ and decided that even after the transition to geographic licensing, incumbents in the 928/959 MHz bands would be permitted to make certain modifications to existing systems as long as the signal level is not increased beyond the incumbent's 25-mile service area.⁸ It did not, however, modify the freeze on applications for new licenses or license modifications in the 928/959 MHz band.⁹

4. *Discussion.* We find that Texas Eastern has fulfilled the requirements of Section 1.925 of the Commission's Rules by specifically demonstrating that the purpose of the application freeze would not be served by its application in this instance. Texas Eastern seeks to modify its application by changing the antenna polarization for Station WNTQ319 from vertical to horizontal.¹⁰ Under the Commission's Part 1, this action is deemed a major modification.¹¹ As a result, a waiver of the 928/959 MHz MAS application freeze is needed in order to permit our acceptance of the subject application. Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) 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 (b) application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹²

5. We note, as an initial matter, that the MAS application freeze was implemented to permit the Commission to make final decisions with respect to the licensing of the MAS frequency bands in the context of the MAS rulemaking proceeding and to allow for the orderly execution of those decisions.¹³ With regard to the 928/959 MHz band, the *Report and Order* grandfathered incumbent MAS operators and permits limited system expansion.¹⁴ In an effort to establish parameters for grandfathered operations in

⁶ See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, 15 FCC Rcd 11956 (2000) (*Report and Order*). We note that a *Further Notice of Proposed Rulemaking* was released in this proceeding on July 1, 1999, to assess the effects of the 1997 Balanced Budget Act on the proposals in the *Notice*. See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rulemaking*, WT Docket No. 97-81, 14 FCC Rcd 10744 (1999) (*Further Notice*). The suspension of the 928/959 MHz band was not affected by the *Further Notice*.

⁷ *Report and Order*, 15 FCC Rcd at 11977 ¶ 55 ("allowing incumbent MAS operators on the 928/959 MHz band . . . to continue operations on these bands is in the public interest").

⁸ *Id.* at 11980 ¶ 62.

⁹ *Id.* at 12005 ¶ 115.

¹⁰ Waiver Request at 1.

¹¹ See 47 C.F.R. § 1.929(d).

¹² 47 C.F.R. § 1.925(b)(3).

¹³ See *Report and Order*, 15 FCC Rcd at 12003-05 ¶¶ 111-115; *Further Notice*, 14 FCC Rcd at 10761-62 ¶¶ 28-31; *Notice*, 12 FCC Rcd at 8003-04 ¶¶ 68-71.

¹⁴ *Report and Order*, 15 FCC Rcd at 11977-80 ¶¶ 55-62. See also 47 C.F.R. § 101.1331(c) (operators in the 928/959 MHz MAS band as of January 19, 2000 are grandfathered and may expand their systems provided that the

the 928/959 MHz band, the *Report and Order* permits modifications to systems provided that signal levels do not surpass the composite contour resulting from a 25-mile radius from the center of each master station transmitter site.¹⁵ Based on the information before us, we conclude that Texas Eastern's proposed modification of its antenna polarization from vertical to horizontal would not cause the signal levels of Station WNTQ319 to go beyond the station's composite contour. Hence, after implementation of Texas Eastern's proposed modification, Station WNTQ319's operations would be consistent with the defined parameters for incumbent stations set forth in the *Report and Order*. We also believe that implementation of the proposed modification will not have any impact on the amount of 928/959 MHz spectrum available under the new licensing approach. For these reasons, we conclude that the underlying purpose of the application freeze would not be served by its application to this case. Further, we believe that permitting the proposed modification would be in the public interest because it would allow Texas Eastern to address an operational concern regarding its experiencing of disproportionate interference.¹⁶ We believe that such a result would promote more effective and efficient spectrum utilization without compromising the efficacy of the Commission's decisions in the MAS rulemaking proceeding.

6. Based on our review of the Waiver Request, we find that a waiver of the suspension for filing major modification applications for the 928/959 MHz MAS band is warranted under the circumstances presented. Granting a waiver is warranted as, in this instance, the underlying purpose of the freeze would not be served by its application in this matter. In this connection, we also believe that granting the waiver would further the public interest.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request filed by Texas Eastern Communications, Inc. on April 20, 2000, IS GRANTED.

8. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), the modification application filed by Texas Eastern Communications, Inc. on April 20, 2000, FCC File No. 0000112721, WILL BE ACCEPTED FOR FILING and PROCESSED in accordance with this *Order*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

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signal level of the additional transmitter(s) does not increase the composite contour that occurs at a 25-mile radius from the center of each master station transmitter site).

¹⁵ *Report and Order*, 15 FCC Rcd at 11977-80 ¶¶ 55-62. See also 47 C.F.R. § 101.1331(c).

¹⁶ See Waiver Request at 1.