

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

In the Matter of
ROHM AND HAAS TEXAS INC.
Request for Waiver of 900 MHz Application
Freeze
File No. 0008546830

ORDER

Adopted: November 13, 2019

Released: November 13, 2019

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order, we address an application filed by Rohm and Haas Texas Inc. (RHT)1 to modify its license for 896-901/935-940 MHz (900 MHz) band Business/Industrial/Land Transportation Station WNQU981 by adding two frequency pairs and an associated request for waiver of the current 900 MHz application freeze.2 We deny the waiver request as set forth below and dismiss the application.

2. Background. RHT is a manufacturer of specialty materials, including adhesives, sealants, and coatings.3 It operates a five-channel 900 MHz radio system at its facility in Deer Park, Texas, for operational and emergency communications including its own fire and rescue services.4

3. In September 2018, the Wireless Telecommunications Bureau announced a temporary freeze on the acceptance of applications for new or expanded use of 900 MHz band frequencies.5 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 the inquiry into potential rule changes to promote next-generation technologies and services in the band.6 The Public Notice noted that licensees have recourse via the Commission's waiver provisions to request an exception to the freeze.7 In 2019, the Commission released a Notice of Proposed Rulemaking proposing to realign the 900 MHz band to create a 3/3 megahertz

1 See FCC File No. 0008546830 (filed Feb. 27, 2019; amended May 9, 2019 and Sept. 3, 2019), Request for Rules Waiver (Waiver Request).

2 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 Red 8735 (WTB 2018) (Freeze Public Notice), recon. pending.

3 See Waiver Request at 1.

4 See id.

5 See Freeze Public Notice, 33 FCC at 8735-36.

6 Id. at 8735 (citing Review of the Commission's Rules Governing the 896-901/935-940 MHz Band, Notice of Inquiry, 32 FCC 6421 (2017)).

7 See id. at 8736, n.4.

broadband segment, while reserving the remaining 2/2 megahertz of spectrum for narrowband operations.⁸

4. In February 2019, RHT filed an application to add two 900 MHz channels and requested a waiver of the 900 MHz application freeze.⁹ In its waiver request, RHT claims that it is experiencing “system busy” calls and delayed critical voice communications.¹⁰ It asserts that it began planning the construction of a communications tower for an upgraded 900 MHz system in November 2017 and filed an antenna structure registration (ASR) in March 2018, but the ASR was not granted until August 2018 due to delays in coordinating with tribal authorities.¹¹ RHT states that it was then unable to locate any available channels before the 900 MHz application freeze was announced the following month, so it decided to repurpose channels assigned to its affiliated company Union Carbide Corporation (Union Carbide) in Texas City, Texas, about 26 miles from Deer Park.¹² RHT’s proposed contours are not contained by Union Carbide’s licensed parameters, so grant of RHT’s application would expand use of 900 MHz band frequencies in the area.¹³

5. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that a grant of the 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.¹⁴ RHT asserts that it meets the second prong of the waiver standard.¹⁵

6. We conclude that the circumstances presented by RHT do not warrant a waiver of the 900 MHz freeze. That RHT was in the process of submitting the instant application when the freeze was announced is not a sufficient reason to grant the requested waiver.¹⁶ Nor is a need for more capacity in an existing service area unique or unusual.¹⁷ In these respects, the instant case resembles the waiver request that we recently denied in the matter of *Eversource Energy Service Company*.¹⁸ Moreover, RHT requests more channels in a larger market.¹⁹ Consequently, we conclude that RHT has not met the waiver standard. We deny the waiver request and will dismiss the application.

⁸ See *Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 1550 (2019).

⁹ RHT originally requested three channels, but subsequently amended the application to remove the third channel. See Waiver Request at 3.

¹⁰ See *id.* at 2.

¹¹ See *id.*

¹² See *id.* at 2-3.

¹³ Indeed, most of RHT’s proposed coverage area is beyond Union Carbide’s existing coverage area.

¹⁴ 47 CFR § 1.925(b)(3).

¹⁵ See Waiver Request at 3.

¹⁶ See *Merryville Investments*, Letter Order, 15 FCC Rcd 4219, 4220-21 (WTB CWD LTAB 2000); *cf. Radiofone, Inc.*, Order, 15 FCC Rcd 6854, 6854-44, para. 3 (WTB CWD PRB 1999).

¹⁷ See *Educational Broadband Corp.*, Memorandum Opinion and Order, 28 FCC Rcd 15562, 15567, para. 15 (WTB BD 2013); *Nextel Communications, Inc.*, Order, 14 FCC Rcd 11678, 11693, para. 36. (WTB 1999).

¹⁸ *Eversource Energy Service Company*, Order, DA 19-909 (WTB MD Sept. 12, 2019), 2019 WL 4439828.

¹⁹ Eversource requested one channel, while RHT seeks two. Eversource requested a site in East Springfield, Massachusetts (part of the Springfield-Holyoke Basic Trading Area), while grant of RHT’s application would encumber the channels over much of the Houston area.

7. 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 Waiver Request filed by Rohm and Haas Texas Inc. on February 27, 2019, and amended on September 3, 2019, in association with application FCC File No. 0008546830 IS DENIED, and application FCC File No. 0008546830 SHALL BE DISMISSED.

8. 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau