

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

In the Matter of )
RAM TECHNOLOGIES, INC. )
Application for Renewal and Modification of ) FCC File No. 0000091689
Private Operational Fixed Microwave Station )
WNTC445 )

ORDER ON RECONSIDERATION

Adopted: May 21, 2001

Released: May 22, 2001

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

I. INTRODUCTION

1. On August 28, 2000, the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Bureau) dismissed Ram Technologies, Inc.'s (RAM) March 9, 2000, application for the renewal and modification of the license for Station WNTC445, Burlington, OH. RAM requests reconsideration of the Branch dismissal. For reasons stated below, we deny RAM's Reconsideration Petition and affirm the Branch's action.

II. BACKGROUND

2. In 1998, the Commission established a unified policy for dismissing and returning applications, as well as pleadings related to such applications (unified policy). On June 28, 1999, the Commission modified such policy, and on July 1, 1999, the Bureau began implementing the policy as modified. The unified policy applies to Wireless Radio Services six months after the licensing information for that service is implemented in the Bureau's Universal Licensing System (ULS). In this case, licensing

1Ram Technologies, Inc.'s Petition for Reconsideration (filed Sept. 27, 2000) (Reconsideration Petition) at 2.

2Id. at 1.

3Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order, WT Docket 98-20, 13 FCC Rcd 21027 (1998) (ULS Report and Order).

4Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476 (1999) (ULS Memorandum Opinion & Order).

5Wireless Telecommunications Bureau Revises and Begins Phased Implementation of Its Unified Policy for Reviewing License Applications and Pleadings, Public Notice, 14 FCC Rcd 11182 (WTB 1999) (Unified Policy Public Notice).

6Id., 14 FCC Rcd at 11191.

information for the point-to-point microwave service was implemented in the ULS on August 30, 1999.<sup>7</sup> As a result, the effective date of the unified policy with regards to the point-to-point microwave service was March 1, 2000. The unified policy, therefore, applied to RAM's renewal application, which was filed on March 9, 2000.

3. Under the unified policy, applications or pleadings that are defective, as a general matter, are subject to dismissal, rather than being returned to the applicant for correction. As an exception, however, the Commission noted that it retained "the discretion to return an application if circumstances warrant."<sup>8</sup> In the *Unified Policy Public Notice*, the Bureau determined that it would return for correction, rather than dismiss, timely filed renewal applications and timely filed notifications of construction (*i.e.*, where dismissal could result in expiration or termination of a license).<sup>9</sup> The Bureau decided to return (rather than dismiss) timely filed renewal applications and timely filed notifications of construction for two reasons.<sup>10</sup> First, renewals and construction notifications are simple filings where it is unlikely that applicants will make a large number of errors.<sup>11</sup> Second, the Bureau noted that because dismissal will lead to expiration or termination of the license, the Bureau would likely have to review Special Temporary Authority (STA) requests, waiver requests, and/or petitions for reconsideration filed by the applicant in an effort to continue operation and regain the license.<sup>12</sup>

4. With respect to returns, the Commission previously has noted that "if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute."<sup>13</sup> The Bureau reiterated this notion in the *Unified Policy Public Notice* by stating that:

Returns will be done by letter and will clearly state that failure to respond within 60 days will result in dismissal of the subject application. If at the end of the 60-day period the Bureau is still unable to process the application (whether or not it has been amended), the Bureau may dismiss the application pursuant to Section 1.934(c) for failure to prosecute. As noted above, applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications.<sup>14</sup>

---

<sup>7</sup>Wireless Telecommunications Bureau to Begin Use of Universal Licensing System (ULS) for Microwave Services on August 30, 1999, *Public Notice*, 14 FCC Rcd 12393 (WTB 1999).

<sup>8</sup>*ULS Report and Order*, 13 FCC Rcd at 21069 ¶ 92.

<sup>9</sup>*Unified Policy Public Notice*, 14 FCC Rcd at 11182. This return policy only affects timely filed renewal applications and timely filed notifications of construction on license applications. The return policy does not apply to notifications for antenna structures (FCC Forms 854 and 854R).

<sup>10</sup>*Id.* at 11186.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*ULS Report and Order*, 13 FCC Rcd at 21070 ¶ 93.

<sup>14</sup>*Unified Policy Public Notice*, 14 FCC Rcd at 11186-87.

5. RAM provides paging services to its customers in the state of Kentucky and surrounding areas.<sup>15</sup> RAM utilizes Station WNTC445 for critical control links to its paging transmitters.<sup>16</sup> Through its operation of Station WNTC445, RAM provides paging services to public safety users, hospitals, and a uranium enrichment plant.<sup>17</sup>

6. On March 9, 2000, RAM filed an application for the renewal and modification of Station WNTC445 using the ULS.<sup>18</sup> On June 6, 2000, the Branch issued a Notice of Application Return (Return Notice) requesting additional information.<sup>19</sup> According to RAM, the Branch mailed the Return Notice to RAM's counsel,<sup>20</sup> who, in turn, sent a facsimile copy of the Return Notice to Forrest A. Collier, RAM's Vice President of Engineering.<sup>21</sup> However, according to RAM, due to a transmission error, Mr. Collier never received a copy of the Return Notice.<sup>22</sup> As a result, Mr. Collier did not respond to the Return Notice.<sup>23</sup> On August 28, 2000, the Branch issued a Notice of Application Dismissal (Dismissal Notice), effective August 27, 2000, dismissing RAM's March 9, 2000, application for the renewal and modification of Station WNTC445, because the application was not amended within sixty days of the June 6, 2000, date shown on the Return Notice.<sup>24</sup>

### III. DISCUSSION

7. Initially, we note that RAM has not attempted to demonstrate that the Branch erred when it dismissed RAM's application for failure to respond to the Return Notice. Rather, it appears that RAM is attempting to show that the Commission should waive the requirement that it was required to respond to the Return Notice within sixty days to avoid dismissal of its application for failure to prosecute. We note, however, that RAM has not actually requested a waiver of that requirement. For the reasons stated below and based upon our review of the facts before us, we conclude that the Branch's action was wholly consistent with the Bureau's unified policy and that no other action is warranted.

---

<sup>15</sup>Reconsideration Petition at 1.

<sup>16</sup>*Id.* at 2.

<sup>17</sup>*Id.* at 1.

<sup>18</sup>*Id.* at 2. A Public Notice of acceptance for filing was issued on March 15, 2000, and receipt of payment of the filing was confirmed on March 22, 2000. *Id.*

<sup>19</sup>*Id.*

<sup>20</sup>According to the Bureau's licensing records, RAM's counsel also serves as RAM's contact person. FCC 601 Main Form: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization at 1.

<sup>21</sup>Reconsideration Petition at 2. Mr. Collier is the RAM officer responsible for filing applications with the Commission. *Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>Notice of Application Dismissal from Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to RAM Technologies, Inc. (Aug. 28, 2000).

8. RAM first argues that its paging customers would be detrimentally affected if RAM were forced to discontinue use of the station.<sup>25</sup> RAM represents that those users include public safety entities, hospitals and a uranium enrichment plant.<sup>26</sup> Simply stated, RAM, in effect, wants an extension of the sixty-day filing requirement set forth in the *Unified Policy Public Notice* on the basis that its operation of Station WNTC445 provides certain public interest benefits, such as the provision of paging services to its customers. The Commission has rejected similar arguments in the past,<sup>27</sup> and we do so now. While there is a general public interest benefit associated with the provision of paging services, particularly to the type of entities identified by RAM, RAM has not demonstrated that its customers would suffer any specific harm if RAM were forced to discontinue its current use of Station WNTC445 or that its customers would be unable to obtain paging services from other sources.<sup>28</sup> Moreover, RAM has not demonstrated sufficiently that it would be unable to provide any paging services without utilizing Station WNTC445 or that it is unable to seek relicensing of the facilities associated with Station WNTC445 through a new application.

8. Second, RAM argues that reinstating its renewal application would not undermine the underlying purpose of requiring applicants to respond to Commission return notices on a timely basis.<sup>29</sup> RAM argues that RAM ordinarily responds on a timely basis and that the failure to respond was caused by a transmission error.<sup>30</sup> We reject RAM's argument because a strict standard for complying with Commission filing requirements is necessary to ensure that applicants are treated fairly and equally.<sup>31</sup> If we were to accept such an argument here, we are concerned that our action would compromise the integrity of the requirement that applicants respond to requests for additional information within sixty days when the Commission returns an application for the purpose of seeking clarification or additional information.<sup>32</sup>

9. Third, RAM argues that granting reconsideration would serve the underlying purpose of the Commission's policy regarding return notices.<sup>33</sup> According to RAM, the purpose of the return notice is to afford an applicant an opportunity to correct an omission or error in an application without the applicant suffering the negative effects of outright dismissal.<sup>34</sup> We believe that RAM's argument is in- apposite because it ignores the requirement that applicants respond to return notices within sixty days. The purpose of that requirement is to ensure timely prosecution and disposition of the application. RAM was given an

---

<sup>25</sup>Reconsideration Petition at 3.

<sup>26</sup>*Id.*

<sup>27</sup>*See* Waste Management, Collection & Recycling, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 12939, 12944 ¶ 12 (1999).

<sup>28</sup>*See id.*

<sup>29</sup>Reconsideration Petition at 3.

<sup>30</sup>*Id.*

<sup>31</sup>First Auction of Interactive Video and Data Service (IVDS) Licenses, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 ¶ 7 (1996).

<sup>32</sup>*See id.*; *see also Unified Policy Public Notice*, 14 FCC Rcd at 11186.

<sup>33</sup>Reconsideration Petition at 3.

<sup>34</sup>*Id.*

opportunity to correct its application by responding to the Return Notice. RAM failed to take advantage of such opportunity. We therefore disagree with RAM that granting its Reconsideration Petition would serve the underlying purpose of our policy on returns. Further, we believe that the Branch's decision was the appropriate course of action and the approach most consistent with the unified policy, absent a sufficient waiver showing, under the circumstances presented.<sup>35</sup>

#### IV. CONCLUSION

10. For the reasons stated herein, we deny RAM's Reconsideration Petition and affirm the Branch's action in dismissing RAM's March 9, 2000, application for the renewal and modification of Station WNTC445.

#### V. ORDERING CLAUSES

11. **ACCORDINGLY IT IS ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Request for Reconsideration, filed on September 27, 2000, by Ram Technologies, Inc. **IS DENIED.**

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

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

---

<sup>35</sup> In addition, we believe that a waiver request regarding the Branch's August 27, 2000 action made in the context of a reconsideration request at this juncture is a procedurally flawed approach. See 47 C.F.R. §§ 1.106(c), 1.925.