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

In the Matter of Applications of	)	
	)	
SAN DIEGO GAS & ELECTRIC COMPANY	)	FCC File Nos. 0000072170
	)	0000072216
For Authority to Operate	)	
Multiple Address Systems Stations at	)	
Carlsbad and San Marcos, California	)	

ORDER ON RECONSIDERATION

Adopted: June 27, 2001 **Released: July 6, 2001**

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

I. INTRODUCTION

1. On November 17, 2000, San Diego Gas & Electric Company (SDGE) filed two petitions for reconsideration (Petitions) of the Licensing and Technical Analysis Branch's (Branch) dismissal of two applications, FCC File Nos. 0000072170 and 0000072216, for authorization to operate Multiple Address System (MAS) stations in Carlsbad and San Marcos, California, respectively. For the reasons set forth herein, we deny the petitions.

II. BACKGROUND

2. On January 19, 2000, the Commission released the *MAS Report and Order* (*MAS R&O*), which streamlined the procedures and restructured the rules governing the licensing of MAS.[1] Among its modifications to the MAS service rules, the Commission designated twenty of the forty MAS channel pairs in the 932/941 MHz band for public safety/Federal Government and private internal services, and provided that these channels are to be licensed on a site-based, first-come, first-served basis (with five of the channels set aside for public safety services).[2] Additionally, upon the release of the *MAS R&O*, the Commission lifted the suspension of the filing of applications for authorization to use the 932/941 MHz MAS band,[3] thus allowing the filing and processing of applications for MAS operations in this band.[4] The

[1] Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Report and Order*, 15 FCC Rcd 11956 (2000) (*MAS R&O*). The slip opinion, FCC 99-415 (rel. Jan. 19, 2000) was corrected by *Erratum*, 15 FCC Rcd 16415 (2000) and the *MAS R&O*, as published in the FCC Record, includes these corrections.

[2] *Id.* at 11968 ¶ 31, 11971 ¶ 37, 11976 ¶ 53.

[3] The Commission temporarily suspended the acceptance and processing of applications for new licenses in the 932/941 MHz band on February 27, 1997 with the release of the *MAS Notice of Proposed Rule Making*. The Commission believed that this action would enable it to effectively consider the proposals outlined in the proceeding. *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Notice of Proposed Rule Making*, 12 FCC Rcd 7973, 8006 ¶ 79 (1997).

MAS R&O stated, "coordination of the operations on these frequencies will be accomplished through the IRAC [Interdepartment Radio Advisory Committee] of NTIA [National Telecommunications and Information Administration], using the mileage separation criteria in Part 101 of our Rules."[5]

3. On January 20, 2000, SDGE filed the above-captioned applications for authority to operate MAS stations, requesting frequency pairs 932/941.43125 MHz and 932/941.41875 MHz in Carlsbad and San Marcos, California, respectively. The applications were filed without evidence of prior frequency coordination. In February 2000, California Water Service Company (CWSC) filed applications to use the same MAS frequencies at Carson and Rolling Hills, California, respectively.[6] CWSC provided evidence of prior frequency coordination.

4. An erratum to the *MAS R&O* was released on March 3, 2000 where the Commission made minor editorial changes to clarify its intentions with respect to certain issues addressed in the proceeding.[7] As corrected, the *MAS R&O* stated, "coordination of operations on the five channels set aside for public safety services, as defined by Part 90 of the Commission's rules, will be accomplished through the IRAC of the NTIA, using the mileage separation criteria in Part 101 of our Rules."[8]

5. Subsequently, on May 2, 2000, the Branch returned SDGE's applications with a letter requesting a "Supplemental Showing [p]art 101.103(d) per Rule Section 101.21."[9] On May 23, 2000, SDGE amended its applications to include evidence of frequency coordination.[10] However, on October 12, 2000, the Branch dismissed SDGE's applications, stating that they were defective because they were "untimely filed with respect to the previously applied-for stations of California Water Service Company."[11] SDGE filed the subject petitions on November 17, 2000 and asserted that its applications must be reinstated *nunc pro tunc* and processed to grant.[12]

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[4] *See MAS R&O*, 15 FCC Rcd at 12011 ¶ 137.

[5] *MAS R&O* (slip opinion), FCC 99-415 ¶ 53. IRAC is an entity that coordinates radio frequencies that are utilized by the Federal Government.

[6] FCC File Nos. 0000080603 (filed on Feb. 3, 2000), 0000079294 (filed on Feb. 2, 2000).

[7] Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Erratum*, 15 FCC Rcd 16415 (2000).

[8] *Id*. at 16415 ¶ 2; *MAS R&O*, 15 FCC Rcd at 11976 ¶ 53.

[9] *See* Notice of Application Return, Reference Nos. 171302, 171298 (dated May 2, 2000).

[10] On May 25, 2000, SDGE further amended its applications to include a "private internal use" statement pursuant to the Commission's Rules.

[11] *See* Petitions at Ex. 2. The Branch's October 12, 2000 dismissal of the SDGE applications was placed on public notice on October 18, 2000. *Public Notice*, Rep. No. 671 (rel. Oct. 18, 2000).

[12] Petitions at 8.

III. DISCUSSION

6. SDGE states that its applications should not have been returned on May 2, 2000. It argues that the applications were complete when filed on January 20, 2000, because they were filed in accordance with procedures set forth in the original *MAS R&O*, which stated that coordination for the subject frequencies would be accomplished through the IRAC.[13] It argues that applying the *MAS R&O* erratum retroactively to its applications violated its due process rights.[14] SDGE also argues that even if the returned applications were defective, the amended applications should have retained their place in the processing line and been processed before CWSC's February 2000 filings.[15]

7. We disagree. First, we conclude that SDGE's applications were in fact incomplete when they were filed on January 20, 2000 because the applications had not been properly coordinated in accordance with the Commission's Rules. Although the *MAS R&O* set forth some of the parameters by which licensing in the 932/941 MHz bands would proceed, the discussion in the original *MAS R&O* did not relieve or dismiss MAS applicants' obligation to meet all of the licensing requirements in the Commission's Rules (*i.e.*, the other rules outlined in Part 101). Nothing in the *MAS R&O* regarding the 932/941 MHz MAS band repealed the requirement for applicants to coordinate with other non-Federal Government radio users, pursuant to Section 101.103(d) of the Commission's Rules.[16] SDGE did not submit evidence of coordination with other non-Federal Government licensees as required by Section 101.103(d) when its application was originally filed and thus, it failed to comply with the Commission's Rules. As a result, SDGE's applications were defective for not having properly coordinated its requested frequencies in accordance with Section 101.103(d) of the Commission's Rules. Consequently, we also conclude that the Branch's adherence to that requirement was not retroactive rulemaking, and did not violate SDGE's due process rights.

8. Because we find that SDGE's application was not complete as submitted on January 20, 2000, these applications should have been dismissed as defective rather than returned by the Branch. Section 1.934(d)(1) of the Commission's Rules states that an application is defective if it is incomplete with respect to informational showings.[17] Clearly, SDGE failed to comply with the informational showing regarding frequency coordination with non-Federal Government radio users. Thus, dismissal, and not return, of the application was the appropriate course of action.

9. Finally, we conclude that SDGE's amended applications should be governed by the rules and procedures applicable to major amendments. Thus, we agree with SDGE that a returned application will

[13] Petitions at 7.

[14] *Id.* at 10-13.

[15] *Id.* at 7-8.

[16] 47 C.F.R. § 101.103(d) (states that for "each frequency authorized under this part, the following frequency usage coordination procedures will apply").

[17] 47 C.F.R.§ 1.934(d)(1).

lose its place in the processing line only in instances where the required amendment is major.[18] Section 1.929(a)(5) of the Commission's Rules provides that "an application or amendment requiring frequency coordination pursuant to the Commission's rules" is classified as major.[19] SDGE asserts that its frequency coordination showing is not a major filing in accordance with Section 1.929(a)(5).[20] It argues that this provision specifically deems only an amendment requiring coordination to be a major filing, but not an amendment which provides the required coordination.[21] SDGE concludes that its amendments therefore were minor pursuant to Section 1.929(k),[22] so its applications should have retained their place in the processing line.[23]

10. Although SDGE is correct in its conclusion that Section 1.929(a)(5) is the applicable provision in this instance for determining whether its May 23, 2000 filings were major, we disagree with its interpretation of the rule. We believe that an amendment supplying evidence of required frequency coordination is no less an "amendment requiring frequency coordination" than an amendment changing the technical specifications such as to require new or re-coordination. In both instances, the Commission receives evidence of frequency coordination for proposed operations that had not previously been coordinated. It is this new submission regarding frequency coordination that causes the amendment to be classified as major. Thus, we conclude that SDGE's May 23, 2000 frequency coordination filings to its applications were correctly characterized as major actions that initiated a new filing date. As a result, we affirm the Branch's finding that the SDGE applications were late-filed, and its action dismissing the applications.[24]

IV. CONCLUSION AND ORDERING CLAUSES

11. We find that SDGE had sufficient notice of its obligation to demonstrate that the frequencies for which it applied had been coordinated pursuant to Section 101.103 of the Rules. In addition, we conclude that the May 23, 2000 filings to provide evidence of frequency coordination could only properly be characterized as major amendments pursuant to Section 1.929(a)(5) of the Commission's Rules.

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[18] Petitions at 7-8; *see* Amendment 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, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027, 21069-70 ¶ 93 (1998).

[19] 47 C.F.R. § 1.929(a)(5).

[20] Petitions at 7-8.

[21] *Id.* at 8.

[22] 47 C.F.R. § 1.929(k) states that "any change not specifically listed above as major is considered minor."

[23] Petitions at 8-9.

[24] We note that SDGE is correct in its assessment that the Branch did not cite the correct authority for its action. *See* Petitions at 12-13. 47 C.F.R. § 1.227 is not applicable in this instance and 47 C.F.R. § 1.958 no longer exists. 47 C.F.R. § 1.934 is the appropriate authority.

Consequently, SDGE's applications were untimely with respect to the February 2000 CWSC applications. Thus, for the foregoing reasons, we affirm the Branch's decision to dismiss the SDGE applications.

12. 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 Petitions for Reconsideration of the dismissal of FCC File Nos. 0000072170 and 0000072216, filed by San Diego Gas & Electric Company on November 17, 2000, are DENIED.

13. 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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