

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

In the Matter of
GTECH CORPORATION
Application for Authority to Operate
Multiple Address System Station at
Phoenix, Arizona
FCC File No. 0000193645

ORDER ON RECONSIDERATION

Adopted: July 3, 2001

Released: July 5, 2001

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

1. Introduction. On January 12, 2001, GTECH Corporation (GTECH) filed a petition for reconsideration (Petition) of the dismissal of the above-captioned application by the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau. GTECH requests that the Division reinstate its application for authorization to operate a Multiple Address System (MAS) station in Phoenix, Arizona, nunc pro tunc. For the reasons set forth herein, we grant the Petition and reinstate the above-captioned application.

2. Background. On July 17, 2000, Salt River Project Agricultural & Power District (SRP) was granted special temporary authority (STA) to operate a facility under the call sign WPQP274 in Tempe, Arizona on MAS frequencies 952/928.43750 MHz. On July 27, 2000, GTECH filed an application for authority to operate a new MAS station on frequencies 952/928.43125 MHz in Mesa, Arizona, about six miles from SRP's facility. GTECH submitted evidence of frequency coordination with its application that concluded that the proposed location for its system complied with the interference protection criteria set forth in Sections 101.105 and 101.147 of the Commission's Rules. GTECH's frequency coordination submission did not consider SRP's Tempe, Arizona operations under call sign WPQP274. On November 15, 2000, the Branch dismissed GTECH's Mesa application as defective, on the grounds that GTECH's proposed station was short-spaced with respect to SRP's Tempe, Arizona MAS facility, and did not contain the required short-spacing agreement.

3. On July 25, 2000, GTECH filed the above-captioned application for authority to operate a new MAS station at coordinates 33-26-8.0N and 112-18-14.0W on MAS frequencies 952/928.44375

1 Petition for Reconsideration, filed January 12, 2001 (Petition).

2 See Special Temporary Authority, FCC File No. 0000188009, Call Sign WPQP274 (granted July 17, 2000).

3 FCC File No. 0000195561.

4 FCC File No. 0000195561, Supplemental Showing Attachment - Letter from Sydney T. Black, Engineer, Black & Associates to Allen Ross, GTECH Corporation (Feb. 21, 2000), which indicated that there are no fixed co-channel systems less than 145 km (90 miles) or mobile co-channel systems less than 113 km (70 miles) or grandfathered co-channel systems within the search radius that required protection. See also 47 C.F.R. §§ 101.105, 101.147.

5 See Notice of Application Dismissal, Reference No. 600701 (Nov. 16, 2000).

MHz in Phoenix, Arizona.<sup>6</sup> GTECH submitted evidence of frequency coordination with its application that concluded that the proposed location for its system complied with the interference protection criteria set forth in Sections 101.105 and 101.147 of the Commission's Rules.<sup>7</sup> On September 11, 2000, SRP filed an application for authority to operate a new MAS station on frequencies 952/928.43750 MHz in Tempe, Arizona.<sup>8</sup> SRP's application was short-spaced with respect to both the GTECH Mesa application and the GTECH Phoenix application.<sup>9</sup> Subsequently, on October 24, 2000, the tower owner at GTECH's proposed site submitted to the Commission a correction of its coordinates from 33-26-8.0N and 112-18-14.0W to 33-26-8.0N and 112-18-11.0W, a change of three seconds in longitude.<sup>10</sup> GTECH filed an amendment to its application on November 21, 2000, with a modified frequency coordination to reflect the new coordinates.<sup>11</sup> On December 14, 2000, the Branch dismissed GTECH's Phoenix application as defective, on the grounds that it was untimely filed with respect to SRP's previously filed application.<sup>12</sup> The Branch indicated that the November 21, 2000 amendment to GTECH's application was a major amendment that initiated a new filing date and rendered the GTECH application defective because it was received after the "cut-off" established by the SRP application.<sup>13</sup> GTECH filed the subject Petition on January 12, 2001, asking the Division to reinstate its Phoenix application *nunc pro tunc* for processing.<sup>14</sup>

4. *Discussion.* In its Petition, GTECH asserts that the Branch's action was erroneous because the subsequently filed SRP application and GTECH's pending petition to deny the SRP application had not been addressed at the time that its application was dismissed.<sup>15</sup> GTECH further states that the Branch was incorrect when it characterized GTECH's amendment of November 21, 2000 to its proposed site as major because the amendment was only intended to update the Commission's records to reflect the tower owner's correction, not to relocate its site.<sup>16</sup> GTECH adds that the amendment would be minor if the Commission finds that it constitutes a site relocation.<sup>17</sup> We disagree.

5. We do not believe that the Branch was obligated to address GTECH's petition to deny prior to its action concerning GTECH's pending Phoenix application.<sup>18</sup> While Section 1.929 of the Commission's Rules provides that a change in transmit antenna location exceeding 5 seconds in latitude

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<sup>6</sup> FCC File No. 0000193645.

<sup>7</sup> FCC File No. 0000193645, Supplemental Showing Attachment – Letter from Sydney T. Black, Engineer, Black & Associates to Allen Ross, GTECH Corporation (Feb. 21, 2000), which indicated that there are no fixed co-channel systems less than 145 km (90 miles) or mobile co-channel systems less than 113 km (70 miles) or grandfathered co-channel systems within the search radius that require prior coordination. *See also* 47 C.F.R. §§ 101.105, 101.147.

<sup>8</sup> FCC File No. 0000216989.

<sup>9</sup> *See* Petition to Deny filed by GTECH against SRP Application No. 0000216989, dated October 6, 2000.

<sup>10</sup> *See* FCC File No. 0000193645 – Transmittal Letter from Scott A. Mackoul, Counsel for GTECH to Susan Mickley, Wireless Telecommunications Bureau, FCC (dated Nov. 21, 2000).

<sup>11</sup> *See* FCC File No. 0000193645 – Amendment (dated Nov. 21, 2000)

<sup>12</sup> *See* Notice of Application Dismissal, Reference No. 660125 (Dec. 15, 2000).

<sup>13</sup> *Id.*

<sup>14</sup> Petition at 5.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4.

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

<sup>18</sup> *See* Petition, Attachment B – Petition to Deny filed by GTECH against SRP Application No. 0000216989 on October 6, 2000. *See also* Attachment C – Erratum to Petition to Deny (dated Dec. 20, 2000). GTECH's petition does not comply with the criteria set forth in Section 1.939 of the Commission's Rules and is therefore an informal objection. *See* 47 C.F.R. § 1.939(b), (c), (d).

and/or longitude is a major amendment, that rule also provides that any change to the center of operation or an increase in radius of a circular operation is a major amendment.<sup>19</sup> The rule makes no distinction between a correction of coordinates and an actual relocation of a facility.<sup>20</sup> Thus, any change to the center point of an MAS station (*i.e.*, a master station) is major, regardless of whether the change was intended only to correct the coordinates. Accordingly, GTECH's amendment of November 21, 2000 to its master station was a major amendment that initiated a new filing date for its application.<sup>21</sup>

6. Although we concur with the Branch that the correct receipt date for GTECH's application was November 21, 2000, we disagree with its determination that the SRP application filed on September 11, 2000 established the "cut-off" date for GTECH's subsequently filed Phoenix application.<sup>22</sup> On June 5, 2001, the Division reinstated GTECH's Mesa application because SRP's operations were secondary at the time GTECH filed its complete application.<sup>23</sup> As a result, SRP's application was dismissed as defective because it was untimely filed with respect to GTECH's Mesa application.<sup>24</sup> Thus, SRP's September 11, 2000 Tempe application need not be considered in determining the disposition of GTECH's Phoenix application. A review of the FCC database indicates that there are no other stations or applications short-spaced with GTECH's proposed operation. Therefore, we reverse the Branch's decision and reinstate the GTECH Phoenix application for further processing by the Branch consistent with this *Order on Reconsideration*.

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by GTECH Corporation on January 12, 2001, IS GRANTED to the extent stated herein.

8. IT IS FURTHER ORDERED that the GTECH application, FCC File No. 0000193645, IS REINSTATED and shall be processed by the Licensing and Technical Analysis Branch consistent with this *Order on Reconsideration*.

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.

#### FEDERAL COMMUNICATIONS COMMUNICATION

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

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<sup>19</sup> See 47 C.F.R. § 1.929(d)(1)(i).

<sup>20</sup> The Commission's Rules specifically indicate instances where data corrections are considered minor modifications. For example, in the 2 GHz band, Section 101.81(d) of the Commission's Rules specifically lists a data correction that does not involve a change in the location of an existing facility as a minor modification.

<sup>21</sup> See 47 C.F.R. § 1.927(h).

<sup>22</sup> See Notice of Application Dismissal, Reference No. 660125 (Dec. 15, 2000).

<sup>23</sup> See GTECH Corporation, *Order on Reconsideration*, DA 01-1346 (rel. June 5, 2001).

<sup>24</sup> See Notice of Application Dismissal, Reference No. 945671 (June 12, 2001).