

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

In the Matter of	)	
	)	
Claircom Licensee Corporation and GTE	)	File Nos. 0000421562
Airfone Incorporated Requests For Waivers of	)	0000420815
Air-Ground Radiotelephone Service Rules	)	

**ORDER**

**Adopted: October 5, 2001**

**Released: October 9, 2001**

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

**I. Introduction**

1. On April 9, 2001, Claircom Licensee Corporation (“Claircom”) and GTE Airfone Incorporated (“GTE Airfone” and, collectively, “Air-Ground licensees”) submitted requests for joint waivers of sections 22.857, 22.869 and 22.381 of the commercial Air-Ground Radiotelephone Service (“Air-Ground”) licensing rules (“Waiver Request”). On May 15, 2001, the Wireless Telecommunications Bureau released a Public Notice (DA 01-1216) seeking comments on the Waiver Request.<sup>1</sup> The Bureau received one comment from Claircom supporting the waiver request.

2. In the Waiver Request, the Air-Ground licensees request the following: (1) waiver of section 22.857 of the Commission’s rules to combine unassigned control channels P-5 and P-6 and use them as an additional communications channel C-30 and an increase in guardband from 3.2 kHz to 3.6 kHz between control channel P-4 and the proposed communications channel C-30; (2) waiver of sections 22.857 and 22.869 of the Commission’s rules to allow for the use of unassigned control channel P-4 for Air-Ground equipment testing without prior Commission approval; and (3) waiver of section 22.381 of the Commission’s rules to allow for the use of a mobile auxiliary test transmitter on fixed channels currently designated for ground station use. The Air-Ground licensees assert that grant of the waivers will serve the public interest by enhancing the availability and the provision of Air-Ground services to the public.

**II. Discussion**

3. The Commission may grant a waiver if it is demonstrated that: (1) the underlying purpose of the rule 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 (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or

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<sup>1</sup> See *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver of Part 22 Air-Ground Radiotelephone Service Rules, DA 01-1216 (rel. May 15, 2001).

contrary to the public interest, or the applicant has no reasonable alternative.<sup>2</sup> For the reasons discussed herein, we grant the waivers requested by the Air-Ground licensees, subject to the conditions set forth below.

4. Since Claircom and GTE Airfone are currently the only two licensees operating and providing Air-Ground services, the purpose of section 22.857, which is to provide an exclusive control channel for each Air-Ground licensee, would leave several control channels unassigned and would result in Air-Ground spectrum being unused. By allowing the licensees to use the unassigned Air-Ground control channels (P-5 and P-6) as a communications channel (C-30) and increase the guardband from 3.2 kHz to 3.6 kHz between control channel P-4 and the communications channel C-30, the Division believes that grant of the waiver request (with conditions) will serve the public interest by enabling the Air-Ground licensees to more effectively use the allocated spectrum.

5. The purpose of sections 22.857 and 22.869 is to require all licensees to obtain authorization or experimental licenses prior to conducting any equipment testing. With the grant of the waiver request to allow control channels P-5 and P-6 (which are normally used for testing by the Air-Ground licensees) to be used as a communications channel, they will no longer be available for testing. The Division believes that grant of the requested waiver of sections 22.857 and 22.869 to allow the use of control channel P-4 on a routine basis without separate individual authorization to test equipment is warranted and will conserve Commission resources, reduce delays in testing, research and development, and serve the public interest by enhancing the availability and the provision of Air-Ground services to the public.

6. The purpose of section 22.381 is to authorize auxiliary transmitters only to test the performance of fixed receiving equipment located remotely from the control point and to transmit only on channels designated for mobile transmitters. The effect is to restrict the use of fixed channels for testing airborne equipment to the laboratory or the production line. Claircom and GTE Airfone argue that the current rule restricts their ability to test equipment after it has been installed on the aircraft at a location where there is no ground station within range. Since the Air-Ground licensees are responsible for the maintenance of the transmission equipment utilized by the caller and the licensee, the Division believes that grant of this waiver request, with the conditions set herein, will be in the public interest, reduce the Commission's regulatory burden, and provide Claircom and GTE Airfone with testing flexibility while providing adequate interference protection.

### III. Ordering Clauses

7. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and 309, and sections 0.331 and 1.925(b)(3) of the Commission's rules, the waiver of section 22.857 requested by Claircom and GTE Airfone is GRANTED subject to the following conditions: (1) if circumstances exist that result in interference to a licensee, Claircom and GTE Airfone shall resolve the interference in accordance with the Commission's rules; and (2) the use of channels P-5 and P-6 as C-30 pursuant to this waiver is subject to any future

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<sup>2</sup> See 47 C.F.R. § 1.925(b)(3).

decision by the Commission to assign this spectrum to another Air-Ground licensee or to use it for another purpose.

8. IT IS FURTHER ORDERED that the waiver of sections 22.857 and 22.869 requested by Claircom and GTE Airfone is GRANTED subject to the following conditions: (1) Claircom and GTE Airfone shall coordinate their use of channel P-4 with one another; (2) they shall provide each other with test schedules and other information ten days prior to any testing on channel P-4; and (3) the use of channel P-4 pursuant to this waiver is subject to any future decision by the Commission to assign this spectrum to another Air-Ground licensee or to use it for another purpose.

9. IT IS FURTHER ORDERED that the waiver of section 22.381 requested by Claircom and GTE Airfone is GRANTED subject to the following conditions: (1) Claircom and GTE Airfone shall not exceed 0 dBm EIRP while using ground station channels for testing; (2) no channel block shall be used for testing purposes at a transmitter site located within 50 miles of a location where the channel is being used to provide commercial aviation Air-Ground service; (3) channel blocks used for testing may be used only to test aircraft situated on an airport tarmac or hangar area; (4) use of test channel blocks is permitted at itinerant locations on an intermittent basis, as testing is needed; (5) Claircom and GTE Airfone shall each use their own FCC assigned and authorized control channels for test purposes; (6) use of test channels is governed by the same free channel Air-Ground channel availability rules set forth in section 22.865(a) of the Commission rules; and (7) use of auxiliary test transmitters to provide commercial Air-Ground service to the public is prohibited.

FEDERAL COMMUNICATIONS COMMISSION

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