

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

In the Matter of
Applications for Consent to Assignment of
Private Land Mobile Radio Authorizations from
Lotus Development Corp. and
Sequent Computer Systems, Inc. to
IBM Research and Development, Inc.
INTERNATIONAL BUSINESS MACHINES CORP.
Requests for Waiver of Section 1.948 of the
Commission's Rules
File Nos. 0000353656 and 0000353739
File Nos. 0000353759, 0000353782,
and 0000353799

ORDER

Adopted: March 8, 2001 Released: March 12, 2001

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

1. Introduction. On August 28, 2000, IBM Research and Development, Inc. (IBM R&D), a wholly-owned subsidiary of International Business Machines Corp. (IBM), filed the above captioned applications, each with a Request for Waiver (Request) of the Commission's Rules. For the reasons set forth below, we grant the three Requests associated with the applications for license assignments from Sequent Computer Systems, Inc. (Sequent), and deny the two Requests associated with the applications for license assignments from Lotus Development Corp. (Lotus).

2. Background. Sequent and Lotus were Commission licensees that IBM acquired without prior Commission approval. On May 18, 2000, the Commission's Enforcement Bureau (Bureau) adopted a Consent Decree that terminated a forfeiture proceeding against IBM along with the Bureau's investigation into unauthorized transfers of licenses, including the five licenses that are the subject of the captioned applications. The Bureau released an order adopting this Consent Decree on May 19, 2000, in which it noted, inter alia, IBM's commitment to establishing a comprehensive compliance program to prevent future violations of Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d).

1 See File Nos. 0000353656, 0000353739, 0000353759, 0000353782, and 0000353799, Request for Waiver filed by IBM on August 28, 2000 (collectively referred to herein as the "Requests"). For convenience of reference only, we refer to both companies collectively as "IBM."

2 See Requests at 1. Sequent was licensed for three Private Land Mobile Radio (PLMR) stations under Call Signs WNXT503, WNYM818, and WNSA207; Lotus is the licensee of two PLMR stations under Call Signs KNJJ238 and WNZT528. IBM purchased Lotus on July 7, 1995, and Sequent on September 24, 1999. Id.

3 See Requests at 1 citing Notice of Apparent Liability for Forfeiture of International Business Machines, Order, 15 FCC Rcd 10393 (2000) (Enforcement Order).

4 See Enforcement Order, 15 FCC Rcd 10393, 10394 ¶ 4. See 47 U.S.C. § 310(d)

3. *Requests for Waiver.* The assignor portion of each of the five captioned applications is signed by a former Sequent or Lotus employee, as applicable, who is now employed by IBM.<sup>5</sup> IBM states that these IBM employees were former employees of Lotus and Sequent, as applicable, with direct knowledge of the stations, and the persons likely to have signed Form 1046 for Lotus and Sequent, as applicable, had timely applications been filed before IBM acquired each licensee.<sup>6</sup>

4. Section 1.948 of the Rules, however, contemplates that the assignor portion of an application for consent to assign a PLMR authorization will be signed by a director, officer, or authorized employee, if the applicant assignor is a corporation.<sup>7</sup> In each Request, IBM asks us to accept the signatures of the former Sequent and Lotus employees as adequate documentation to allow the license assignments to proceed to IBM.<sup>8</sup> By letter dated December 13, 2000, IBM represents that Sequent has fully merged into IBM and that Lotus remains a separate subsidiary.<sup>9</sup> IBM, which incorporates the Enforcement Bureau proceeding by reference in each Request, states that it seeks to assign the captioned licenses to IBM R&D as part of its compliance program.<sup>10</sup>

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate that a grant of the waiver would be in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case.<sup>11</sup> Or, in the alternative, a petitioner must show that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or that the applicant has no reasonable alternative.<sup>12</sup>

6. A waiver of the signature requirement is warranted as to the captioned applications to assign the three Sequent licenses. We find that IBM has demonstrated that it lacks a reasonable alternative to providing the signature, on Form 1046, of a former Sequent employee with direct knowledge of the stations. Given that Sequent fully merged into IBM, *i.e.*, dissolved, there cannot be any directors, officers, or authorized employees of Sequent to sign the assignment applications. Thus, we grant IBM's waiver requests concerning the Sequent assignment applications.

7. A waiver of the signature requirement is not warranted concerning the Lotus license assignment applications. The record reflects that Lotus remains a separate subsidiary and IBM R&D

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<sup>5</sup> Requests at 2. *See* FCC Form 1046.

<sup>6</sup> Requests at 2.

<sup>7</sup> *See* 47 C.F.R. §§ 1.948(a); 1.948(c); 1.907; 1.917(a); 1.917(b).

<sup>8</sup> Requests at 2. IBM states that the IBM employees who signed Form 1046 were former employees of Lotus and Sequent, as applicable, with direct knowledge of the stations, and the persons likely to have signed Form 1046 for Lotus and Sequent, as applicable, had timely applications been filed before IBM acquired each licensee. *Id.*

<sup>9</sup> *See* Letter from James M. Ebelino, Associate General Counsel, IBM Global Services, to John Evanoff, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (received December 15, 2000).

<sup>10</sup> *See* Requests at 1-2. *See also* 47 C.F.R. § 1.925(b)(2), which permits a waiver applicant to cross-reference the specific filing where the information may be found.

<sup>11</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(ii).

provides no reason why a Lotus director, officer, or authorized employee cannot sign the assignor portion of the application. Thus, unlike with the Sequent applications, we find that IBM R&D has not shown that it lacks a reasonable alternative to simply following the rule.

8. We further find that IBM has not shown that the purpose of the signature requirement, which is to verify the accuracy and validity of the assignor portion of the assignment application, would not be served or would be frustrated by application to the instant case. We acknowledge that Lotus is a wholly-owned subsidiary of IBM; however, the Requests do not explain why we should waive the rule to accept the signature of a former employee instead of the signature of a current director, officer, or authorized employee of Lotus, which appears readily obtainable.

9. Similarly, IBM has not shown that application of the signature requirement would be inequitable, unduly burdensome, or contrary to the public interest. In this connection, we note that the five captioned licenses are for PLMR stations below 470 MHz, wherein proposed assignees of existing licenses may operate the PLMR station during the pendency of the application for up to one hundred and eighty days “upon the filing of a properly completed application.”<sup>13</sup> In view of the above, we deny IBM’s waiver request concerning the Lotus assignment applications. Accordingly, we dismiss, without prejudice, the assignment applications concerning the Lotus licenses because denying the waiver requests renders the applications defective for lack of proper signature.<sup>14</sup>

10. Accordingly, IT IS ORDERED, that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.331 and 1.925 of the Commission’s Rules, 47 C.F.R. §§ 0.331 and 1.925, the captioned applications and associated Requests for Waiver filed by International Business Machines Corp. on August 28, 2000, concerning the three Sequent licenses (Call Signs WNXT503, WNYM818 and WNSA207) ARE GRANTED.

11. IT IS FURTHER ORDERED, that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.331 and 1.925 of the Commission’s Rules, 47 C.F.R. §§ 0.331 and 1.925, the captioned applications and associated Requests for Waiver filed by International Business Machines Corp. on August 28, 2000, concerning the two Lotus licenses (Call Signs KNJJ238 and WNZT528) ARE DISMISSED WITHOUT PREJUDICE AND DENIED, respectively.

12. IT IS FURTHER ORDERED, that the Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, SHALL ISSUE the licenses granted above to IBM R&D and UPDATE the Universal Licensing System in a manner consistent with the Commission’s Rules and the instant *Order*.

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.

FEDERAL COMMUNICATIONS COMMISSION

Ramona E. Melson  
Deputy Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>13</sup> 47 C.F.R. § 90.159(c).

<sup>14</sup> See 47 C.F.R. § 1.925(c)(ii).