

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

In the Matter of Applications	)			
	)			
GTECH CORPORATION	)	FCC File Nos.	0000092593,	0000092594
	)	0000092613,	0000092619,	0000092632,
For Authority to Operate Multiple Address System	)	0000092653,	0000092670,	0000092689,
Stations	)	0000092708,	0000092715,	0000133945,
	)	0000133948,	0000133957,	0000133965,
	)	0000133975,	0000133985,	0000142081,
	)	0000142117,	0000142122,	0000142127,
	)	0000142133,	0000142138,	0000142160,
	)	0000142164		

**ORDER**

**Adopted: January 9, 2001**

**Released: January 12, 2001**

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

**I. Introduction**

1. On July 20, 2000, GTECH Corporation (GTECH) filed a petition requesting reconsideration of the dismissal of the above-captioned applications by the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau (Bureau).<sup>1</sup> GTECH requests that the Division reinstate the applications *nunc pro tunc* and allow it to amend its applications.<sup>2</sup> For the reasons set forth herein, we deny in part and dismiss in part GTECH's petition for reconsideration.

**II. Background**

2. On February 27, 1997, the Commission released a *Notice of Proposed Rule Making (Notice)* in which it initiated a comprehensive examination of its licensing approach for Multiple Address Systems (MAS).<sup>3</sup> In the *Notice*, the Commission proposed to designate most of the spectrum in the 932/941 MHz bands and all of the spectrum in the 928/959 MHz bands for subscriber-based services, and to use competitive bidding to select between mutually exclusive applications in these bands.<sup>4</sup> The Commission also proposed to designate the 928/952/956 MHz bands exclusively for private internal use.<sup>5</sup>

<sup>1</sup> See Petition for Reconsideration.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> Amendment of the Commission's Rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making and Order*, WT Docket 97-81, 12 FCC 7973 (1997).

<sup>4</sup> *Id.* at 7997 ¶¶ 50-51.

<sup>5</sup> *Id.* at 7980 ¶ 13.

Additionally, the Commission temporarily suspended the acceptance and processing of MAS applications in the 928/959 MHz bands and 932/941 MHz bands, and applications to provide subscriber-based service in the 928/952/956 MHz bands, pending resolution of the *Notice*.<sup>6</sup>

3. On August 5, 1997, the Balanced Budget Act was enacted, which, *inter alia*, eliminated the Commission's authority to issue licenses by lottery and amended the Communications Act to require the Commission, with limited exceptions, to award mutually exclusive licenses using competitive bidding procedures.<sup>7</sup> On March 6, 1998, the Bureau released a *Memorandum Opinion and Order* which concluded that certain users of MAS spectrum, including GTECH, do not provide subscriber-based service in the 928/952/956 MHz bands and can apply for spectrum in the 928/952/956 MHz MAS bands.<sup>8</sup>

4. On July 1, 1999, the Commission released the *Further Notice of Proposed Rule Making (Further Notice)* in the MAS proceeding.<sup>9</sup> Among other things, the *Further Notice* examined the effect of the Balanced Budget Act on the proposals in the *Notice* to allocate the 932/941 MHz and 928/959 MHz bands for subscriber-based services and to award initial licenses for these bands through competitive bidding;<sup>10</sup> to reserve five channel pairs in the 932/941 MHz MAS bands for Federal Government/public safety use;<sup>11</sup> and to reserve the 928/952/956 MHz bands exclusively for private internal use and to continue to issue licenses for these bands on a site-by-site basis.<sup>12</sup> The *Further Notice* also extended the temporary suspension of the acceptance and processing of applications to include all MAS bands regardless of the type of services proposed.<sup>13</sup>

5. On January 19, 2000, the Commission released the *Report and Order (R&O)* in the MAS proceeding.<sup>14</sup> In addition to streamlining the MAS licensing procedures, the *R&O* designated the 928/952/956 MHz and a portion of the 932/941 MHz bands for private internal service and lifted the application freeze for these frequencies.<sup>15</sup> The *R&O* also defined "private internal service" as "a service where licensees use their authorized frequencies purely for internal business purposes or public safety

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<sup>6</sup> *Id.* at 8003-04 ¶ 68.

<sup>7</sup> Pub. L. 105-33, Title III, 111 Stat. 251 (1997). *See generally* Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, FCC 00-403 (rel. Nov. 20, 2000).

<sup>8</sup> GTECH Corporation, *Memorandum Opinion and Order*, 13 FCC Rcd 4290 (WTB 1998).

<sup>9</sup> Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rule Making and Order*, WT Docket 97-81, 14 FCC Rcd 10744, 107446 ¶ 2 (1997).

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

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

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

<sup>13</sup> *Id.* at 10761 ¶ 28.

<sup>14</sup> Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket 97-81, 15 FCC Rcd 11956 (2000) (*R&O*).

<sup>15</sup> *Id.* at 11957 ¶ 2.

communications and not on a for-hire or for-profit basis,”<sup>16</sup> and established that applicants for MAS licenses in these bands must submit a certification with their application, stating why the proposed operation satisfies the definition of private internal use.<sup>17</sup>

6. Between March 7, 2000 and June 2, 2000, GTECH filed thirty-four applications for authorization for MAS frequencies. However, GTECH failed to include the required certifications, stating why the proposed operations satisfied the definition of private internal use, with these applications.<sup>18</sup> Due to the absence of such certifications, the Branch determined that the communications GTECH intended to provide did not satisfy the definition of “private internal use” and, thus, dismissed the subject applications as defective between June 16, 2000 and June 23, 2000.<sup>19</sup> On July 20, 2000, GTECH filed the subject petition requesting reconsideration of the dismissal of its twenty-four applications.<sup>20</sup>

7. Between July 25, 2000 and July 27, 2000, GTECH filed twenty-four new applications to replace the twenty-four applications that were dismissed by the Branch.<sup>21</sup> For each of the replacement applications, GTECH attached the required certifications stating why the application satisfied the Commission’s definition of private internal use. Twenty-one of the twenty-four replacement applications have been granted,<sup>22</sup> one replacement application is pending<sup>23</sup> and two replacement applications were dismissed.<sup>24</sup>

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<sup>16</sup> *Id.* at 11965 ¶ 20.

<sup>17</sup> *Id.* at 11965 n.39. *See* 47 C.F.R. § 101.1309.

<sup>18</sup> Ten of the thirty-four applications were granted after they were amended to include the required certification: FCC File Nos. 0000144429, 0000144436, 0000144473, 0000144487, 0000144503, 0000144523, 0000144526, 0000144527, 0000165117 and 0000165134.

<sup>19</sup> *See* Branch’s Dismissal Letters to GTECH Corporation (dated June 16, 2000 – June 20, 2000). Because GTECH failed to file the required certification, the applications were defective. We need not address GTECH’s contention that its proposed use is in fact private internal use.

<sup>20</sup> *See* Petition for Reconsideration. On October 13, 2000, GTECH filed its Supplement to Petition for Reconsideration. *See* GTECH Corporation Supplement to Petition for Reconsideration (filed Oct. 13, 2000) (Supplement). The Supplement was provided in response to a request by the Division to provide more information about its network and a further explanation as to how it meets the definition of “private internal use.” Because the Supplement does not provide arguments regarding GTECH’s failure to file the required certifications, we need not address the arguments presented in the Supplement.

<sup>21</sup> *See* FCC File Nos. 0000193645, 0000193646, 0000193647, 0000193648, 0000193649, 0000193704, 0000193705, 0000193706, 0000193707, 0000193708, 0000193709, 0000194927, 0000194928, 0000194929, 0000194930, 0000194931, 0000194932, 0000194933, 0000195048, 0000195049, 0000195050, 0000195051, 0000195561, 0000195774.

<sup>22</sup> FCC File Nos. 0000193646, 0000193647, 0000193648, 0000193649, 0000193705, 0000193706, 0000193707, 0000193708, 0000193709, 0000194927, 0000194928, 0000194929, 0000194930, 0000194931, 0000194932, 0000194933, 0000195048, 0000195049, 0000195050, 0000195051 and 0000195774.

<sup>23</sup> FCC File No. 0000193704.

<sup>24</sup> FCC File Nos. 0000195561 and 0000193645. The Branch dismissed FCC File No. 0000195561 because the frequency engineering analysis submitted with the application failed to show interference protection to existing (continued....)

### III. Discussion

8. Although GTECH requests reconsideration of the dismissal of each of the subject twenty-four applications, we need only discuss the merits of GTECH's Petition for Reconsideration with respect to its application to operate in Nogales, Arizona.<sup>25</sup> As stated above, GTECH subsequently was authorized to operate in twenty-one of the twenty-four service areas it originally requested. Because GTECH was ultimately authorized to operate in twenty-one of the twenty-four areas for which it originally applied, we will dismiss the Petition for Reconsideration with respect to those twenty-one applications<sup>26</sup> as moot. In addition, as explained below, we note that the Petition for Reconsideration is untimely with respect to two of the three remaining subject applications, specifically GTECH's applications to operate in Mesa, Arizona<sup>27</sup> and Phoenix, Arizona.<sup>28</sup> Therefore, GTECH's Petition for Reconsideration will only be addressed on the merits with respect to its Nogales application.

9. *Mesa and Phoenix Applications.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.<sup>29</sup> Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the release date of the Commission's action.<sup>30</sup> GTECH failed to file its Petition for Reconsideration within thirty days from the release date of the dismissal letter for its Phoenix and Mesa applications. Both the Phoenix and Mesa applications were

(Continued from previous page)

Station WPQP274, Phoenix, Arizona, licensed to Salt River Project Agricultural & Power District (d.b.a SRP) on frequencies 952/928.43750 MHz. The proposed station was short-spaced with respect to SRP's existing station and the application lacked the required short-spacing agreement. Therefore, the application was defective pursuant to Section 1.934 of the Commission's Rules. 47 C.F.R. § 1.934. See Branch's Dismissal Letter to GTECH Corporation regarding FCC File No. 0000195561 (dated Nov. 16, 2000). The Branch dismissed FCC File No. 0000193645 because it was untimely filed with respect to FCC File No. 0000216989, filed by SRP on September 14, 2000. GTECH filed FCC File No. 0000193645 on July 25, 2000. However, GTECH filed a major amendment to its application on November 21, 2000, which changed the proposed coordinates. The effect of the major amendment was to change the receipt date used in the cut-off determination from July 25, 2000 to November 21, 2000. Section 1.227 of the Commission's Rules provides that no application will be consolidated for hearing with a previously filed application unless such application is substantially complete and tendered for filing by the close of business of the same day. 47 C.F.R. § 1.227. Therefore, the amended application was received after the cut-off date established by SRP's application and dismissed by the Branch. See Branch's Dismissal Letter to GTECH Corporation regarding FCC File No. 0000193645 (dated Dec. 15, 2000).

<sup>25</sup> FCC File Number 0000133945.

<sup>26</sup> FCC File Nos. 0000092593, 0000092613, 0000092619, 0000092632, 0000092653, 0000092619, 0000092632, 0000092653, 0000092670, 0000092689, 0000092715, 0000133948, 0000133957, 0000133965, 0000133985, 0000142081, 0000142117, 0000142122, 0000142127, 0000142133, 0000142138, 0000142160 and 0000142164.

<sup>27</sup> FCC File No. 0000092594.

<sup>28</sup> FCC File No. 0000092708. Because GTECH sought authority to operate in multiple locations in Phoenix, we further specify that the transmit location of this application is 11328 West Buckeye Road, Phoenix, Arizona.

<sup>29</sup> 47 U.S.C. § 405.

<sup>30</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

dismissed by letters dated June 16, 2000.<sup>31</sup> GTECH did not file the subject Petition for Reconsideration until July 20, 2000.<sup>32</sup> We conclude that, with respect to the Mesa and Phoenix applications, GTECH failed to satisfy the filing requirements in accordance with Section 1.106 of the Commission's Rules when it filed the subject Petition for Reconsideration more than thirty days after the Mesa and Phoenix applications were dismissed. The filing requirement applies even if the petition for reconsideration is filed only one day late.<sup>33</sup> Therefore, we conclude that the Petition for Reconsideration should be dismissed as untimely with respect to the Phoenix and Mesa applications.

10. *Nogales Application.* GTECH's Petition for Reconsideration was timely with respect to the dismissal of its Nogales application. We also note that GTECH has not since been authorized to operate in this area as a result of filing a replacement application, because the relevant replacement application is still pending.<sup>34</sup> Therefore, we will address the Petition for Reconsideration on the merits, with respect to the Nogales application.

11. First, GTECH argues that the dismissal was improper because the rules cited in the dismissal notice, Sections 101.1305 of the Commission's Rules<sup>35</sup> (which provides the definition of private internal use) and Section 101.1309 of the Commission's Rules<sup>36</sup> (which, requires that the applicants certify why the application satisfies the definition of private internal use), were not effective until June 3, 2000 and all of the subject applications were filed on or before June 2, 2000.<sup>37</sup> We disagree. The *R&O* clearly provides that "*effective upon the release of the [R&O], applications to use MAS frequencies in the 928-928.85/952-952.85 MHz bands and 956.25-956.45 MHz bands will be accepted for filing provided that these applications are in compliance with the policies set forth [therein].*"<sup>38</sup> Therefore, the *R&O* lifted the suspension of the acceptance of MAS applications only with respect to applications meeting the requirements set forth in the *R&O*. The requirement that applicants for 928/952/956 MHz bands must provide a certification stating why the applications satisfied the Commission's definition of private internal use was a policy set forth in the *R&O*.<sup>39</sup> Accordingly, we conclude that GTECH was required to file the

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<sup>31</sup> See Branch's Dismissal Letter to GTECH Corporation regarding FCC File No. 0000092594 (dated June 16, 2000); Branch's Dismissal Letter to GTECH Corporation regarding FCC File No. 0000092708 (dated June 16, 2000).

<sup>32</sup> See Petition for Reconsideration.

<sup>33</sup> See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909 (1975); In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 2782, 2784-85 ¶ 9 (WTB PSPWD 1999), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000). See generally Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19472 (WTB 2000).

<sup>34</sup> See FCC File No. 0000193704 (Nogales, Arizona).

<sup>35</sup> 47 C.F.R. § 101.1305.

<sup>36</sup> 47 C.F.R. § 101.1309.

<sup>37</sup> Petition for Reconsideration at 3.

<sup>38</sup> *R&O*, 15 FCC Rcd at 12011 ¶ 136 (emphasis added).

<sup>39</sup> *Id.* at 11965 n.39.

certificate when it filed the subject application.

12. Second, GTECH argues that the application was valid on its face because it clearly stated that it was for private internal use.<sup>40</sup> Even if we were to agree that the Nogales application stated that the proposed station was for private internal use, the Nogales application was nevertheless defective because GTECH did not file the required certification stating why the application satisfied the Commission's definition of private internal use.<sup>41</sup> Therefore, we find that the application was properly dismissed.<sup>42</sup>

#### IV. Conclusion

13. Accordingly, we conclude that the Petition for Reconsideration filed by GTECH on July 20, 2000, should be dismissed in part as moot, dismissed in part as untimely and denied in part, for the reasons discussed herein.

#### V. Ordering Clauses

14. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by GTECH Corporation on July 20, 2000 is DISMISSED AS MOOT with respect to FCC File Nos. 0000092593, 0000092613, 0000092619, 0000092632, 0000092653, 0000092670, 0000092689, 0000092715, 0000133945, 0000133948, 0000133957, 0000133965, 0000133985, 0000142081, 0000142117, 0000142122, 0000142127, 0000142133, 0000142138, 0000142160 and 0000142164; DISMISSED AS UNTIMELY with respect to FCC File Nos. 0000092594 and 0000092708; and DENIED with respect to FCC File No. 0000133975.

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<sup>40</sup> Petition for Reconsideration at 3.

<sup>41</sup> See *R&O*, 15 FCC Rcd at 11965 n.39.

<sup>42</sup> GTECH also contends that it is the Commission's custom and practice to return MAS applications missing the required information about the use of frequencies and allow the applicant the opportunity to resubmit the application without losing its place in line. GTECH concedes that the Commission adopted a unified policy for dismissing applications for MAS applications on April 29, 2000, but states that the policy still affords the Commission staff discretion to return the applications in lieu of dismissing, allowing the applicant sixty days to amend the application. See Wireless 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); Wireless Telecommunications Bureau (WTB) Extends Mandatory Electronic Filing Date for Microwave Licensees to Coincide with Availability of Electronic Filing via the Internet, *Public Notice*, DA 00-317 (rel. Feb 18, 2000). Thus, GTECH argues that, because it had been the Commission's custom and practice to return applications with defects similar to the subject applications, it would be discriminatory and inconsistent with the public interest to dismiss its applications. We note, however, that the certification was a new requirement established by the *R&O*. See *R&O*, 15 FCC Rcd at 11956 n.39. Therefore, we do not believe that any Commission custom or practice of returning applications when an applicant fails to file the required certification exists. Furthermore, because there is no custom or practice with respect to MAS applications that fail to include the required certification, we believe the GTECH's Nogales application was properly dismissed.

15. 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

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