

GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WASHINGTON, D.C. 20005

(202) 408-7100

FACSIMILE: (202) 289-1504

WRITER'S DIRECT DIAL NUMBER

Thomas J. Dougherty, Jr.
(202) 408-7164

CHICAGO, ILLINOIS

RECEIVED

JAN 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: **Motion for Extension of Time**
ET Docket No. 95-183
PP Docket No. 93-253, FCC 95-500

Dear Mr. Caton:

Transmitted herewith, on behalf of DCT Communications, Inc., are an original and nine (9) copies of its Motion for Extension of Time to Comment on the *Notice of Proposed Rule Making and Order*, FCC 95-500 in the above-referenced dockets.

If any questions should arise with regard to this matter, please contact the undersigned counsel.

Respectfully submitted,

Thomas J. Dougherty, Jr. by Amr

Thomas J. Dougherty, Jr.
Counsel for
DCT Communications, Inc.

Enclosures

No. of Copies rec'd
LH/BODE

079

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of the Commission's)	ET Docket No. 95-183
Rules Regarding the 37.0-38.6)	
GHz and 38.6-40.0 GHz Bands)	
)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding, 37.0-38.6)	
GHz and 38.6-40.0 GHz)	

Directed To: The Commission

MOTION FOR EXTENSION OF TIME TO COMMENT

DCT COMMUNICATIONS, INC. ("DCT"), pursuant to Rule 1.46(b),¹ and by its counsel, hereby requests the Commission to allow interested persons additional time to file comments responsive to the *Notice of Proposed Rule Making and Order*, FCC 95-500 (rel. December 15, 1995)(the "*NPRM*") issued in the above-captioned dockets. A comment due date 30-days after Federal Register publication of the *NPRM*, but in no event any earlier than February 15, 1996, is requested. In support of this motion, the following is respectfully submitted:

The *NPRM* was adopted on December 15, 1995, and released on that date. It specifies a comment date of January 16, 1996. While a 32-day period in many instances would be a sufficient time to prepare comments, in this case it is not.

On December 16, 1995, just after the release of the *NPRM*, the Commission was closed due to lack of funding. Since that date, the Commission was open just 1 day. In the ordinary course of events, persons interested in the subject matter of a rule making proceeding would be able, as allowed under the *ex parte* rules and *NPRM* para. 128, to engage in discussions with Commission Staff concerning such important matters as the meaning of proposed rules, other *sub silento* reasons for the proposed rules, and the Staff's initial reaction to proposed commentary on the rules. Such interaction serves to sharpen the focus of comments, to steer commentators toward data and discussions that

¹ This Rule requires the filing of motions for extension on time 7 days in advance. There was no opportunity to comply with that requirement as a result of the budget impasse and the closure of the Commission due to inclement weather. For that reason, the Managing Director has extended the date for all filings due when the Commission was closed to the date of this filing. Public Notice, DA 96-2 (rel. January 11, 1996).

will be meaningful to the Staff and, for those reasons, to encourage rule making which more efficiently serves proper rule making goals. Absent the grant of additional time to comment, that valuable process will not be possible.

Rule 1.415 requires the Commission to provide “[a] reasonable time ... for submission of comments...” We note that, in this case, there are four distinct reasons why 32 days is not reasonable.

First, DCT (and, we are sure, others) did not receive a copy of the *NPRM* from the FCC-authorized contractor who supplies Commission releases for some time after the release date of the *NPRM*. As a result, DCT was unable to even review the *NPRM* for a significant portion of the comment period. This inability to obtain the *NPRM* is a result of the closure of the Federal Government. In addition, the Commission’s public files for were inaccessible during the government shutdown. Access to the Commission’s licensing and rule making files is critical to both researching the issues involved in this proceeding and framing appropriate responses. The Commission will not receive informed public comment when the Commission’s public records were unavailable for inspection during most of the comment period.

Second, the rule making seeks to revise entirely a regulatory scheme for a service with no substantial history. The breadth of the proposals, alone, is unusually great. The fact that we have no service history upon which to measure the *NPRM*’s proposals makes informed commentary all the more difficult. Allowing an additional comment period would, thus, greatly serve the interest in producing rules that promote the public interest.

Third, the 32-day comment period that has been granted book-ends a period when the work ethic takes a backseat to major religious holidays and the end of a calendar year. DCT’s principals, as can be expected, fell victim to these distractions. Certainly, other interested entities also devoted much time to the holidays.

Which leads to another problem with the established comment date. That is, undoubtedly, many potentially interested entities have no notice of that date because a summary of the *NPRM* has not been published in the Federal Register as required by Section 553(b) of the Administrative Procedure Act (the “APA”) and by Rule 1.412(a). As a result, the Commission can expect interested entities to be surprised that the Commission is considering a global revision of the rules governing the 38 and 39 GHz channels. By statute, the Commission must give “interested persons an opportunity to participate in the rule making” through the submission of comments. 5 U.S.C. 553(c). That opportunity must follow the publication of a summary of the *NPRM* in the Federal Register. Obviously, the time for that “opportunity” has not commenced.

Moreover, Rule 1.415(b) states that the comment period must be a “reasonable time.” We submit that another 30 day period, following Federal Register publication, must be provided for the submission of comments to satisfy that requirement in this case.

The grant of an extended comment period will not slow this proceeding. Because of the budget impasse and snow-days, we can expect a great backlog of work for the Commission Staff. It is unlikely that Commission Staff will be able to attend to the rule making with any greater dispatch if the comment period ended today than if it ended 30 days after Federal Register publication of the *NPRM*.

WHEREFORE, the foregoing premises considered, DCT Communications, Inc. respectfully requests the Commission to extend the comment date for the *NPRM* to the date that is 30-days after publication of a summary of the *NPRM* in the Federal Register and, in no event, any earlier than February 15, 1996.

Respectfully submitted,

DCT COMMUNICATIONS, INC.

By: Thomas J. Dougherty, Jr. by AMS
Thomas J. Dougherty, Jr.
Its Counsel

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W., Suite 900 East
Washington, D.C. 20005
(202) 408-7164

January 16, 1996