

FCC MAIL SECTION

Federal Communications Commission

FCC 00-174

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 95-183 ✓
Regarding the 37.0 – 38.6 GHz and	)	RM-8553
38.6 – 40.0 GHz Bands	)	
	)	
Implementation of Section 309(j) of	)	PP Docket No. 93-253
The Communications Act – Competitive	)	
Bidding, 37.0 – 38.6 GHz and	)	
38.6 – 40.0 GHz Bands	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2000

Released: May 18, 2000

Before the Commission:

1. The Commission has before it a motion to accept a late-filed submission (Motion)<sup>1</sup> and an underlying application for review,<sup>2</sup> filed on December 27, 1999, by Cambridge Partners, Inc., AA&T Wireless Services, Stevan A. Birnbaum, Linda Chester, HiCap Networks, Inc., Paul R. Likins, William R. Lonergan, PIW Development Corporation, Cornelius T. Ryan, SMC Associates, Southfield Communications LLC, Video Communications Corporation and Wireless Telco (collectively, Movants), seeking review of a November 23, 1999 public notice dismissing certain 39 GHz applications whose disposition had been frozen pending the outcome of the rulemaking proceeding.<sup>3</sup> As discussed below, we deny the Motion and underlying late-filed application for review.

2. In its motion, Movants allege that the application for review was tendered to a courier at 4:30 p.m. on December 23, 1999, allowing "more than ample time for a normal delivery to the Commission's Office of the Secretary by the 7 p.m. filing deadline."<sup>4</sup> Movants explain that the courier's vehicle experienced a mechanical breakdown and that the courier was "unable to reach his dispatcher via his company-supplied two-way radio, or any other means" to report the problem or to arrange for an alternate delivery scheme to meet the 7 p.m. filing deadline.<sup>5</sup> As a result, the application for review was filed on December 27, 1999, the first business day following the failed delivery attempt.<sup>6</sup>

<sup>1</sup> Motion to Accept Late-File Submission (filed Dec. 27, 1999)(*Motion*).

<sup>2</sup> Application for Review (filed Dec. 27, 1999).

<sup>3</sup> *Public Notice, 39 GHz Applications Dismissed, ET Docket 95-183, DA 99-2631 (rel. Nov. 23, 1999) (Dismissal PN)*.

<sup>4</sup> Motion at 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

3. We find that Movants' application for review was late filed and must be dismissed. Section 5(4) of the Communications Act, as amended, permits any person aggrieved by any action of a delegated authority to file an application for review within the time and in such manner as the Commission may prescribe.<sup>7</sup> Our rules require that applications for review of decisions issued by a delegated authority must be filed within thirty days from the date of public notice of such decision.<sup>8</sup> Movants' assertion that the vehicle of its courier service experienced a mechanical breakdown does not constitute a sufficient justification for the late filing of the application for review. In reaching this decision we find that enforcement of our procedural rules, including periods for filing applications for review, is necessary in order to manage our decision making process in an efficient manner. We are guided by court decisions affirming that enforcement of our procedural rules promotes orderliness and finality in the administrative process and thereby contributes towards the public interest, convenience, and necessity.<sup>9</sup> Accordingly, we deny Movants' motion for leave to file the application for review and dismiss the application for review as untimely.

4. Since the 30-day filing period for applications for review is not mandated by the Communications Act, the Commission has the discretion to examine a late-filed application for review if the public interest requires consideration of the issues raised. Movants argue that the dismissal of the following pending 39 GHz applications was unlawful: (1) Applications that were mutually exclusive as of December 15, 1995, that were arguably cured by subsequently filed amendments of right;<sup>10</sup> and (2) applications that had not completed the requisite thirty day public notice period by November 13, 1995, the release date of the initial *Freeze Order*.<sup>11</sup> The foregoing issues were resolved earlier in the 39 GHz proceeding, and thus, the public interest does not require that they be revisited.<sup>12</sup>

5. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that the Motion to Accept Late-Filed Submission, filed by Cambridge Partners, Inc., AA&T Wireless Services, Stevan A. Birnbaum, Linda Chester, HiCap Networks, Inc., Paul R. Likins, William R. Lonergan, PIW Development Corporation, Cornelius T. Ryan,

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<sup>7</sup> 47 U.S.C. § 155(4).

<sup>8</sup> *Communique Telecommunications, Inc. d/b/a Logically Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau, Memorandum Opinion and Order*, 14 FCC Rcd. 13,635 ¶ 16 citing 47 C.F.R. §§ 1.115(d), 1.4(b)(2); See 47 U.S.C. § 155(c)(4).

<sup>9</sup> *WSTE-TV, Inc. v. FCC*, 566 F.2d 333, 337 (D.C. Cir. 1977); *Civic Telecasting Corporation v. FCC*, 523 F.2d 1185, 1188 (D.C. Cir. 1975), cert. denied, 426 U.S. 949 (1976); *Spanish International Broadcasting Co. v. FCC*, 385 F.2d 615, 622 (D.C. Cir. 1967); *Valley Telecasting Co. v. FCC*, 336 F.2d 914, 917 (D.C. Cir. 1964).

<sup>10</sup> Application for Review (filed Dec. 23, 1999) at 4-6. 47 U.S.C. § 309(j)(6)(E) requires the use of engineering solutions, negotiations and other means in order to avoid mutually exclusive applications in certain settings.

<sup>11</sup> Application for Review at 6-7. See Petition for Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40 GHz Bands, RM-8553, *Order*, 11 FCC Rcd. 1156 (Acting Chief, WTB, Nov. 13, 1995) (*Freeze Order*).

<sup>12</sup> Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd. 18600 (1997) (*Report and Order and Second NPRM*); *aff'd* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands ET Docket No. 95-183, RM-8553, *Memorandum Opinion and Order*, 14 FCC Rcd. 12428 (1999) (*July 29 MO&O*).

SMC Associates, Southfield Communications LLC, Video Communications Corporation and Wireless Telco on December 27, 1999, IS DENIED.

6. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 5(c)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(4), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the Application for Review, filed by Cambridge Partners, Inc., AA&T Wireless Services, Stevan A. Birnbaum, Linda Chester, HiCap Networks, Inc., Paul R. Likins, William R. Lonergan, PIW Development Corporation, Cornelius T. Ryan, SMC Associates, Southfield Communications LLC, Video Communications Corporation and Wireless Telco on December 27, 1999, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary