

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

In the Matter of Applications of	)	
	)	
ADELPHIA BUSINESS SOLUTIONS LONG HAUL, L.P.	)	File No. 0000138764
	)	
AT&T WIRELESS PCS, LLC	)	File No. 0000138777
	)	
ATLANTIS BIDDING CORP.	)	File No. 0000138814
	)	
BACHOW 39 GHZ, INC.	)	File No. 0000138868
	)	
DCT SPIRIT, L.L.C.	)	File No. 0000137403
	)	
MILKYWAY MULTIPOINT, LLC	)	File No. 0000138902
	)	
NEXTBAND COMMUNICATIONS, L.L.C.	)	File No. 0000134149
	)	
PTPMS COMMUNICATIONS, LLC	)	File No. 0000138929
	)	
ZEPHYR WIRELESS, L.L.C.	)	File No. 0000138813
	)	
For Authority to Construct and Operate Facilities in the 39 GHz Band	)	

**ORDER**

**Adopted: September 25, 2000**

**Released: September 26, 2000**

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

1. *Introduction.* On July 31, 2000, Broadband Wireless Access Services (Broadband), Stevan A. Birnbaum (Birnbaum), Cambridge Partners, Inc. (Cambridge), Linda Chester (Chester), HiCap Networks, Inc. (HiCap), William R. Lonergan (Lonergan), PIW Development Corporation (PIW), Paul R. Likins (Likins), Cornelius T. Ryan (Ryan), Southfield Communications LLC (Southfield), SMC Associates (SMC), Video Communications Corporation (VideoCom), and Wireless Telco joined in various petitions to deny the above-captioned applications to the extent that these applications for authorization to operate in the 38.6-40.0 GHz (39 GHz) band conflict with their previously dismissed 39 GHz applications. These petitions are identical with regard to the issues. Accordingly, for the reasons that follow, we consolidate and dismiss these petitions to deny the applications of Adelpia Business Solutions Long Haul, L.P. (Adelpia),<sup>1</sup> AT&T Wireless PCS, LLC (AT&T Wireless),<sup>2</sup> Atlantis Bidding Corp. (Atlantis),<sup>3</sup> Bachow 39

<sup>1</sup> The petitioners filing against the Adelpia application, File No. 0000138764, are Broadband, Cambridge, Chester, HiCap, Lonergan, PIW, Likins, Ryan, Southfield, and SMC. Petition to Deny Application of Adelpia Business Solutions Long Haul, L.P. (dated July 31, 2000) (Petition to Deny Adelpia).

GHz, Inc. (Bachow),<sup>4</sup> DCT Spirit, L.L.C. (DCT),<sup>5</sup> Milkyway Multipoint, LLC (Milkyway),<sup>6</sup> Nextband Communications, L.L.C. (Nextband),<sup>7</sup> PTPMS Communications, LLC (PTPMS),<sup>8</sup> and Zephyr Wireless, L.L.C. (Zephyr).<sup>9</sup>

2. *Background.* The petitioners have appealed the dismissal of their mutually exclusive 39 GHz applications that were filed prior to the adoption of competitive bidding rules for the 39 GHz band to the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit).<sup>10</sup> On January 21, 2000, the Commission placed potential bidders to the 39 GHz band auction (Auction No. 30) on notice that certain decisions reached in the 39 GHz proceeding were being appealed and that resolution of this appeal could have an impact on the availability of spectrum in the 39 GHz band.<sup>11</sup> On May 8, 2000, the Commission's Auction No. 30

(Continued from previous page) \_\_\_\_\_

<sup>2</sup> The petitioners filing against the AT&T Wireless application, File No. 0000138777, are Cambridge, Likins and Ryan. Petition to Deny Application of AT&T Wireless PCS, LLC (dated July 31, 2000) (Petition to Deny AT&T Wireless).

<sup>3</sup> The petitioners filing against the Atlantis application, File No. 0000138814, are Broadband, Birnbaum, Cambridge, Chester, HiCap, PIW, Likins, Southfield, SMC, VideoCom, and Wireless Telco. Petition to Deny Application of Atlantis Bidding Corp. (dated July 31, 2000) (Petition to Deny Atlantis).

<sup>4</sup> The petitioners filing against the Bachow application, File No. 0000138868, are Cambridge, Chester, PIW, Likins, Southfield, and VideoCom. Petition to Deny Application of Bachow 39 GHz, Inc. (dated July 31, 2000) (Petition to Deny Bachow).

<sup>5</sup> The petitioners filing against the DCT application, File No. 0000137403, are Broadband and Wireless Telco. Petition to Deny Application of DCT Spirit, L.L.C. (dated July 31, 2000) (Petition to Deny DCT).

<sup>6</sup> The petitioners filing against the Milkyway application, File No. 0000138902, are Cambridge, Likins, and Southfield. Petition to Deny Application of Milkyway Multipoint, LLC (dated July 31, 2000) (Petition to Deny Milkyway).

<sup>7</sup> The petitioners filing against the Nextband application, File No. 0000134149, are Cambridge, Ryan, and SMC. Petition to Deny Application of Nextband Communications, L.L.C. (dated July 31, 2000) (Petition to Deny Nextband).

<sup>8</sup> The petitioner filing against the PTPMS application, File No. 0000138929, is PIW. Petition to Deny Application of PTPMS Communications, LLC (dated July 31, 2000) (Petition to Deny PTPMS).

<sup>9</sup> The petitioners filing against the Zephyr application, File No. 0000138813, are Broadband, Cambridge, HiCap, PIW, Likins, Southfield, SMC, VideoCom, and Wireless Telco. Petition to Deny Application of Zephyr Wireless, L.L.C. (dated July 31, 2000) (Petition to Deny Zephyr).

<sup>10</sup> *Bachow Communications, Inc. v. FCC*, No. 99-1346; *Bachow Communications, Inc. v. FCC & USA*, No. 99-1347; *DCT Transmission L.L.C. v. FCC & USA*, No. 99-1360; *Cambridge Partners, Inc., et. Al. v. FCC*, No. 99-1361; *Cambridge Partners, Inc., et. al. v. FCC & USA*, No. 99-1362; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC*, No. 99-1363; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC & USA*, No. 99-1364; and *DCT Transmission L.L.C. v. FCC*, No. 99-1365 (D.C. Cir. filed 1999).

<sup>11</sup> Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band, *Public Notice*, 15 FCC Rcd 850, 857 (2000).

concluded.<sup>12</sup> On May 10, 2000, the Wireless Telecommunications Bureau (Bureau) announced the winning bidders in Auction No. 30.<sup>13</sup> All winning bidders were required to electronically file a complete long-form application, FCC Form 601, no later than 6:00 p.m. Eastern Standard Time on May 24, 2000.<sup>14</sup> Adelphia, AT&T Wireless, Atlantis, Bachow, DCT, Milkyway, Nextband, PTPMS, and Zephyr met this deadline. In the *Auction Closes Public Notice*, the Bureau stated that once the long-form applications appeared on a public notice as accepted for filing, interested parties would have ten days to file petitions to deny.<sup>15</sup> The Bureau also stated that the Commission will be prepared to grant an application if it determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination.<sup>16</sup> On July 21, 2000, the Bureau released a corrected version of a *Public Notice*, originally released on July 19, 2000, that accepted for filing the above-captioned applications.<sup>17</sup> On July 31, 2000, the subject petitions to deny were filed, in which the petitioners state their concerns that should they prevail before the D.C. Circuit, their reinstated applications will conflict with certain authorizations that were requested in the above-captioned applications.<sup>18</sup>

3. *Discussion.* As noted, the Commission will be prepared to grant an application if it determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination.<sup>19</sup> The petitioners, in this instance, do not allege any deficiencies in the applicants' qualifications.<sup>20</sup> The petitioners, despite the caption of the subject petitions, do not in fact oppose or

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<sup>12</sup> 39 GHz Band Auction Closes, *Public Notice*, 15 FCC Rcd 13648, 13648 (WTB 2000) (*Auction Closes Public Notice*).

<sup>13</sup> *See id.*

<sup>14</sup> *Id.* at 13649.

<sup>15</sup> *Id.* at 13648, 13654.

<sup>16</sup> *Auction Closes Public Notice*, 15 FCC Rcd at 13648, 13654; *see* 47 C.F.R. § 1.2108(d).

<sup>17</sup> Wireless Telecommunications Bureau Announces that Certain Applications for the Authority to Operate in the 39 GHz Band Are Accepted for Filing, *Public Notice*, 15 FCC Rcd 12668 (WTB 2000) (*Accepted for Filing Public Notice*).

<sup>18</sup> Petition to Deny Adelphia at 2; Petition to Deny AT&T Wireless at 2; Petition to Deny Atlantis at 2; Petition to Deny Bachow at 2; Petition to Deny DCT at 2; Petition to Deny Milkyway at 2; Petition to Deny Nextband at 2; Petition to Deny PTPMS at 2; Petition to Deny Zephyr at 2. On August 10, 2000, five oppositions were filed by Adelphia, AT&T Wireless, Atlantis, Nextband, and Zephyr. In the *Accepted for Filing Public Notice*, 15 FCC Rcd at 12668, we stated that oppositions must be filed no later than five days after the date on which the petition to deny is filed. Nevertheless, oppositions that were filed by August 10, 2000, were timely because under 47 C.F.R. § 1.4(g), weekend days are not counted toward the filing period when the filing period is less than seven days. Additionally, pursuant to 47 C.F.R. § 1.4(h), where service of the petition to deny is done by mail, as in this instance, and the period to file a response is less than ten days long, an additional three days will be allowed for filing such response. On August 18, 2000, PTPMS filed a motion to accept a late-filed opposition. This motion is denied.

<sup>19</sup> *See Auction Closes Public Notice*, 15 FCC Rcd at 13648, 13654; *see also* 47 C.F.R. § 1.2108(d).

<sup>20</sup> *See* Opposition to Petition to Deny Adelphia at 2 ("In the present case, no substantial or material questions exist as to ABS' qualifications to hold the subject licenses."); Opposition to Petition to Deny AT&T Wireless at 3 ("The petition fails to demonstrate that AWP is unqualified to be a licensee."); Opposition to Petition to Deny Nextband at 3 ("The petition fails to demonstrate that Nextband is unqualified to be a licensee.").

request denial of the above-captioned applications.<sup>21</sup> Rather, they seek imposition of an express condition on the grant of the applications.<sup>22</sup> Thus, the petitions would be most appropriately characterized as an informal request for Commission action.<sup>23</sup> We find that the petitioners' requested action is unnecessary under the circumstances. In this regard, we note that Section 402(h) of the Communications Act, as amended, requires that in the event the D.C. Circuit should render a favorable decision involving the petitioners' applications, the Commission must carry out the judgement of the court.<sup>24</sup> Thus, we conclude that no further action regarding the petitioners' claims is required or warranted in the instant matter.

4. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138764, filed by Broadband WirelessAccess Services, Cambridge Partners, Inc., Linda Chester, HiCap Networks, Inc., William R. Lonergan, PIW Development Corporation, Paul R. Likins, Cornelius T. Ryan, Southfield Communications LLC, and SMC Associates on July 31, 2000 IS DISMISSED.

5. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138777 filed by Cambridge Partners, Inc., Paul R. Likins, and Cornelius T. Ryan on July 31, 2000, IS DISMISSED.

6. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138814 filed by Broadband WirelessAccess Services, Stevan A. Birnbaum, Cambridge Partners, Inc., Linda Chester, HiCap Networks, Inc., PIW Development Corporation, Paul R. Likins, Southfield Communications LLC, SMC Associates, Video Communications Corporation, and Wireless Telco on July 31, 2000, IS DISMISSED.

7. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138868 filed by Cambridge Partners, Inc., Linda Chester, PIW Development Corporation, Paul R. Likins, Southfield Communications LLC, and Video Communications Corporation on July 31, 2000, IS DISMISSED.

8. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the

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<sup>21</sup> Petition to Deny Adelpia at 2; Petition to Deny AT&T Wireless at 2; Petition to Deny Atlantis at 2; Petition to Deny Bachow at 2; Petition to Deny DCT at 2; Petition to Deny Milkyway at 2; Petition to Deny Nextband at 2; Petition to Deny PTPMS at 2; Petition to Deny Zephyr at 2.

<sup>22</sup> Petition to Deny Adelpia at 3; Petition to Deny AT&T Wireless at 3; Petition to Deny Atlantis at 3; Petition to Deny Bachow at 3; Petition to Deny DCT at 3; Petition to Deny Milkyway at 3; Petition to Deny Nextband at 3; Petition to Deny PTPMS at 3; Petition to Deny Zephyr at 3.

<sup>23</sup> See 47 C.F.R. § 1.41.

<sup>24</sup> See 47 U.S.C. § 402(h); Applications of Cambridge Partners, Inc., *Memorandum Opinion and Order*, FCC 00-322, ¶ 6 (rel. Sept. 15, 2000); Qualcomm Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, FCC 00-219, ¶ 11 (rel. June 8, 2000). Application of Pinelands, Inc. (Transferor) and BHC Communications, Inc. (Transferee) for Transfer of Control of WWOR-TV, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 6058, 6061 ¶ 13 (1992).

Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000137403 filed by Broadband WirelessAccess Services and Wireless Telco on July 31, 2000, IS DISMISSED.

9. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138902 filed by Cambridge Partners, Inc., Paul R. Likins, and Southfield Communications LLC on July 31, 2000, IS DISMISSED.

10. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000134149 filed by Cambridge Partners, Inc., Cornelius T. Ryan, and SMC Associates on July 31, 2000, IS DISMISSED.

11. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138929 filed by PIW Development Corporation on July 31, 2000, IS DISMISSED.

12. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.2108 of the Commission's Rules, 47 C.F.R. § 1.2108, the petition to deny File No. 0000138813 filed by Broadband WirelessAccess Services, Cambridge Partners, Inc., HiCap Networks, Inc., PIW Development Corporation, Paul R. Likins, Southfield Communications LLC, SMC Associates, Video Communications Corporation, and Wireless Telco on July 31, 2000, IS DISMISSED.

13. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.45(a) and 1.2108 of the Commission's Rules, 47 C.F.R. §§ 1.45(a), 1.2108, the Consolidated Motion to Accept Late-Filed Pleading and Opposition filed by PTPMS Communications, LLC, on August 18, 2000, IS DENIED.

14. 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