

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

In the Matter of Applications of  DCT TRANSMISSION, LLC  to Provide 39 GHz Point-to-Point Microwave Radio Service in Bakersfield, CA, Spokane, WA, Kalamazoo, MI, and Lancaster, PA	) ) ) ) ) ) )	FCC File Nos. 9510295, 9510294, 9600073, and 9600054
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**ORDER ON RECONSIDERATION**

**Adopted: February 23, 2000**

**Released: February 25, 2000**

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

1. On May 28, 1999, DCT Transmission, LLC (DCT) filed a petition for partial reconsideration of the April 28, 1999, *Order*<sup>1</sup> by the Public Safety and Private Wireless Division (Division) dismissing the above-captioned applications to operate new point-to-point microwave radio systems in the 38.6 to 40.0 GHz (39 GHz) band.<sup>2</sup> For the reasons set forth below, DCT's petition is denied.

2. *Background.* Milliwave Limited Partnership (Milliwave) filed a 39 GHz application to serve Bakersfield, CA, which was placed on public notice on April 19, 1995.<sup>3</sup> On September 21, 1995, DCT filed a conflicting application to serve Bakersfield, CA.<sup>4</sup>

3. On May 10, 1995, Milliwave's 39 GHz application to serve Spokane, WA, was placed on public notice.<sup>5</sup> On September 21, 1995, DCT filed a conflicting application to serve Spokane, WA.<sup>6</sup>

4. On May 24, 1995, Milliwave's 39 GHz applications to serve Battle Creek, Grand Rapids, and Lansing, MI, were placed on public notice.<sup>7</sup> On October 2, 1995, DCT filed a conflicting application to serve Kalamazoo, MI.<sup>8</sup>

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<sup>1</sup> DCT Communications, *Order*, 14 FCC Rcd 6847 (WTB PSPWD 1999) (*DCT Order*).

<sup>2</sup> DCT Transmission, LLC, Petition for Reconsideration of Application Dismissals (filed May 28, 1999) (DCT Petition). DCT does not request reconsideration of the Division's dismissal of its 39 GHz application to serve Lancaster, PA (FCC File No. 9600054). *Id.* at 1 n.1.

<sup>3</sup> *DCT Order*, 14 FCC Rcd at 6847 ¶ 2.

<sup>4</sup> *Id.*

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

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

<sup>7</sup> *Id.* at 6847 ¶ 3.

5. On November 13, 1995, Milliwave filed a petition to deny the DCT applications.<sup>9</sup> On November 28, 1995, DCT filed amendments to both its Spokane and Kalamazoo applications in order to resolve any mutual exclusivity that existed with Milliwave's first-filed applications.<sup>10</sup>

6. On April 28, 1999, the Division released an *Order* granting Milliwave's petition to deny and dismissing the DCT applications.<sup>11</sup> The Division concluded that the DCT applications were untimely pursuant to Section 101.45(b) of the Commission's Rules,<sup>12</sup> because they were filed more than sixty days after the Milliwave applications with which they conflicted were placed on public notice.<sup>13</sup>

7. *Discussion.* Section 101.45(b) states that no application will be entitled to comparative consideration with a previously filed application unless such application is substantially complete and tendered for filing within sixty days after the date of the public notice listing the first of the conflicting applications as accepted for filing.<sup>14</sup> As indicated, DCT filed each of its applications well after the time permitted for filing mutually exclusive applications had lapsed.

8. Nevertheless, DCT argues that its Spokane and Kalamazoo applications should not have been dismissed as untimely with respect to Milliwave's applications because the November 27, 1995, amendments eliminated any mutual exclusivity.<sup>15</sup> We disagree. Untimely filing cannot be cured by subsequent amendment.<sup>16</sup> Indeed, a timely filed application is a prerequisite to the processing of an amendment of right,<sup>17</sup> so DCT's proffered amendments were of no effect. Therefore, we find that DCT's late-filed Spokane and Kalamazoo applications were properly dismissed.

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<sup>8</sup> *Id.*

<sup>9</sup> Letter from E. Ashton Johnston, Bryan Cave LLP, to Michael B. Hayden, Chief, Microwave Branch, Licensing Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Nov. 13, 1995).

<sup>10</sup> Letter from James H. Wiesenberg, President, DCT Communications, Inc., to Michael B. Hayden, Chief, Microwave Branch, Wireless Telecommunications Bureau, Federal Communications Commission (filed Nov. 28, 1995).

<sup>11</sup> *DCT Order*, 14 FCC Rcd at 6849 ¶¶ 8-9.

<sup>12</sup> 47 C.F.R. § 101.45(b).

<sup>13</sup> *DCT Order*, 14 FCC Rcd at 6848-49 ¶¶ 6-7.

<sup>14</sup> 47 C.F.R. § 101.45(b).

<sup>15</sup> DCT Petition at 1-2.

<sup>16</sup> See, e.g., Applications of Plaincom, Inc., to Provide 39 GHz Point-to-Point Microwave Service in West Palm Beach-Boca Raton, FL, *Order on Reconsideration*, 14 FCC Rcd 9689, 9691 ¶ 6 (WTB PSPWD 1999).

<sup>17</sup> See DCT Communications, Inc., *Order on Reconsideration*, 14 FCC Rcd 1076, 1078 ¶ 5 (WTB PSPWD 1999), *review pending* (filed Feb. 22, 1999). The placing of an application on public notice as accepted for filing does not preclude the subsequent dismissal of that as application as defective. 47 C.F.R. § 101.37(d) (1995) (now 47 C.F.R. § 1.933(b)).

9. DCT also argues that its Bakersfield application should not have been dismissed because Milliwave withdrew its application to serve Bakersfield on April 6, 1998.<sup>18</sup> DCT is incorrect. On April 6, 1998, a different entity, Columbia Millimeter Communications, L.P., withdrew a different 39 GHz application<sup>19</sup> to serve Bakersfield.<sup>20</sup> Milliwave's application, rather than being withdrawn, was granted on September 18, 1997.<sup>21</sup> Thus, we conclude that the Division properly dismissed DCT's Bakersfield application as late-filed.

10. 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 1.104(b) and 1.106(f) of the Commission's Rules, 47 C.F.R. §§ 1.104(b), 1.106(f), the petition for reconsideration filed by DCT Transmissions, LLC, on May 28, 1999, IS DENIED.

11. 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

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<sup>18</sup> DCT Petition at 2-3.

<sup>19</sup> FCC File No. 9507788 (filed July 19, 1995).

<sup>20</sup> See Letter from E. Ashton Johnston, Paul, Hastings, Janofsky & Walker LLP, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed Apr. 6, 1998).

<sup>21</sup> The call sign for Milliwave's 39 GHz station in Bakersfield, CA, is WPNA369.