

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

In the Matter of)	
)	
NO WIRE, L.L.C.)	FCC File Nos. 9508702, 9509046, 9509049,
)	9509301, 9509309, 9704317 (formerly
Applications for Authority to Establish New Point-)	9509048)
to-Point Microwave Facilities in the 38.6-40.0)	
GHz Frequency Band at Sacramento, CA, Fort)	
Wayne, IN, Columbus, OH, San Jose, CA, Tulsa,)	
OK, and Fort Myers, FL.)	

ORDER ON RECONSIDERATION

Adopted: April 6, 2000

Released: April 10, 2000

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

1. The Public Safety and Private Wireless Division (Division) has before it a consolidated petition for reconsideration (Petition) filed by No Wire L.L.C. (No Wire) on October 21, 1999. No Wire requests reconsideration of letter orders from the Licensing and Technical Analysis Branch (Branch) dismissing the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.¹

2. We have analyzed the Petition and find that the Commission staff properly decided the matters raised. The Petition is devoid of any evidence that the Branch's actions were inconsistent with Commission precedent or policy. In this regard we note that the Commission established and affirmed a processing policy concerning 39 GHz channels that includes the dismissal of (a) applications that failed to meet the thirty-day public notice requirement as of November 13, 1995; (b) all new applications, major modification applications and amendments filed on or after November 13, 1995; and (c) applications whose mutual exclusivity was not resolved by December 15, 1995 and amendments resolving mutual exclusivity that were filed on or after December 15, 1995.² In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.³ Our review of the

¹ The Branch letters were dated September 22, 1999, for application numbers 9508702, 9509046, 9509049, 9509301, and 9509309. The Branch letter was dated August 26, 1999, for application number 9704317 (formerly application number 9509048). On October 5, 1999, the Branch sent a follow-up letter regarding application number 9704317, which clarified the August 26, 1999, letter.

² See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18639-97 ¶¶ 83-97 (1997); *aff'd*, Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 12428, 12440-51 ¶¶ 19-44 (1999).

³ See 47 C.F.R. § 21.31 (b)(2)(i) (1995); 47 C.F.R. § 101.45(b)(2)(i) (disposition of mutually exclusive applications). See also 47 C.F.R. § 1.934 (dismissal of defective applications).

Petition and the Branch letters that were the subject thereof indicate that the Branch's actions with respect to the subject applications were consistent with and pursuant to the Commission's 39 GHz processing policy. Therefore, we uphold the staff decision for the reasons stated therein, and find no reason to disturb it.

3. 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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the consolidated Petition for Reconsideration filed by No Wire on October 21, 1999, IS DENIED.

4. 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