

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

In the Matter of)	FCC File Nos. 9405451, 9408036, 9505287,
)	9505288, 9505289, 9505292, 9505294,
DCT TRANSMISSION, LLC)	9505308, 9505312, 9509664, 9510291,
)	9510296, 9600074, 9510293, 9510300,
Twenty-Eight Applications for 38 GHz)	9600057, 9600058, 9600059, 9600060,
Point-to-Point Microwave)	9600061, 9600062, 9600063, 9600065,
Radio Station Authorizations)	9600068, 9600069, 9600071, 9600072,
)	9600075

ORDER ON RECONSIDERATION

Adopted: April 7, 2000

Released: April 13, 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 petition for reconsideration (Petition) filed by DCT Transmission, LLC (DCT) on December 22, 1999. DCT requests reconsideration of a November 23, 1999, *Public Notice* dismissal of the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.

2. We have analyzed the Petition and find that the Division's Licensing and Technical Analysis Branch (Branch) properly decided the matters raised. The Commission has 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, 1995.¹ In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.² Therefore, we uphold the Branch decision for the reasons stated therein. There is no reason to disturb it.

3. In addition, DCT claims that the dismissal contravenes the Wireless Telecommunications Bureau's (Bureau) earlier findings with respect to its application³ for 39 GHz facilities in the Johnson City,

¹ 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, 18639-457 ¶¶ 83-97 (1997) (*Report and Order*); *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) (*MO&O*).

² 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).

³ FCC File No. 9509664.

TN area.⁴ According to DCT, in January of 1998, the Bureau, in response to DCT's Freedom of Information Act (FOIA) request, stated that DCT's Johnson City application was only partially mutually exclusive and should be partially granted.⁵ In fact, DCT's Johnson City application was fully, not partially, mutually exclusive. DCT requested frequencies 38700-38750 MHz and 38800-38850 MHz.⁶ The portion of DCT's application requesting frequencies 38800-38850 MHz was mutually exclusive with an application filed by AT&T Wireless PCS, Inc. (AT&T) on July 12, 1995.⁷ The portion of DCT's application requesting frequencies 38700-38750 MHz was mutually exclusive with an application filed by SMC Associates (SMC) on July 14, 1995.⁸ The January 5, 1998 response to DCT's FOIA request listed seven partially mutually exclusive applications.⁹ One of the applications it listed was the AT&T application that was mutually exclusive with the 38800-38850 MHz portion of DCT's Johnson City application. The letter erroneously listed DCT as the licensee, but correctly gave the file number for the AT&T application. Thus, DCT's claim that its Johnson City application was identified in the FOIA response as only partially mutually exclusive is understandable, but incorrect.

4. 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 Petition for Reconsideration filed by DCT on December 22, 1999, IS DENIED.

5. 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

⁴ DCT Petition for Reconsideration at 5 (filed Dec. 22, 1999) (Petition).

⁵ Petition at 5.

⁶ 39 GHz Applications Dismissed, *Public Notice*, DA 99-2631 (rel. Nov. 23, 1999).

⁷ FCC File No. 9507189. *Public Notice*, Wireless Telecommunications Bureau Part 21 Weekly Receipts and Disposals, Report No. 1145 (rel. July 26, 1995).

⁸ FCC File No. 9508003. *Public Notice*, Wireless Telecommunications Bureau Part 21 Weekly Receipts and Disposals, Report No. 1147 (rel. Aug. 9, 1995). Even though SMC withdrew its application on May 5, 1997, DCT's application was mutually exclusive with SMC's application as of December 15, 1995. *See* FCC File No. 9508003. *Public Notice*, Wireless Telecommunications Bureau Part 21 Weekly Receipts and Disposals, Report No. 1938 (rel. May 22, 1997).

⁹ Letter from Herb Zeiler, Deputy Chief, Public Safety and Private Wireless Division, to Russ Taylor, counsel for DCT (Jan. 5, 1998).