

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

In the Matter of Application of)	
)	
ASTROLINK COMMUNICATIONS, INC.)	FCC File No. 9506296
)	
to Provide 39 GHz Point-to-Point Microwave)	
Service in Santa Fe, NM)	

ORDER ON RECONSIDERATION

Adopted: December 28, 1999

Released: December 29, 1999

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

1. *Introduction.* We have before us a request from Astrolink Communications, Inc. (Astrolink) for reconsideration of the decision by the Licensing and Technical Analysis Branch (Branch) to dismiss an amendment to the above-captioned application to operate a new Point-to-Point Microwave Radio Service system in the 38.6-40.0 GHz (39 GHz) band.¹ For the reasons set forth below, we deny Astrolink's petition for reconsideration.

2. *Background.* On June 15, 1995, Astrolink filed the above-referenced application for authorization to provide 39 GHz point-to-point microwave service in Santa Fe, NM.² On August 15, 1995, No Wire LLC (No Wire) timely filed a competing application that was mutually exclusive with the Astrolink application.³

3. In an *NPRM and Order* released on December 15, 1995, the Commission suspended the processing of pending mutually exclusive 39 GHz applications and the filing of amendments thereto, pending the outcome of a rulemaking proceeding affecting this service.⁴ In a *Report and Order and Second NPRM* released on November 3, 1997, the Commission announced that it would dismiss, without prejudice, pending mutually exclusive applications.⁵

¹Letter from E. Ashton Johnston, counsel for Astrolink to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed Apr. 5, 1999) (Astrolink Petition).

²FCC File No. 9506296. See *Public Notice*, Report No. 1141, Wireless Telecommunications Bureau Weekly Receipts and Disposals (rel. June 28, 1995).

³FCC File No. 9508163. See *Public Notice*, Report No. 1147, Wireless Telecommunications Bureau Weekly Receipts and Disposals (rel. Aug. 9, 1995).

⁴Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Notice of Proposed Rule Making and Order*, ET Docket No. 95-183, 11 FCC Rcd 4930, 4988-4989 ¶ 123 (1995).

⁵See 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, 18641-45 ¶¶ 87-97 (1997).

4. On September 23, 1998, Astrolink submitted an amendment seeking to reduce its requested service area in order to eliminate the mutual exclusivity that existed between the subject Astrolink and No Wire applications.⁶ On March 3, 1999, the Branch dismissed Astrolink's September 23, 1998 amendment because it was filed after the December 15, 1995 deadline for filing amendments to pending 39 GHz applications.⁷ On April 5, 1999, Astrolink requested that the Branch reconsider its dismissal of the amendment, and retain the amendment pending the resolution of the petitions for reconsideration of the *Report and Order and Second NPRM*.⁸

5. In a *Memorandum Opinion and Order* released on July 29, 1999, the Commission denied those petitions for reconsideration and affirmed its 39 GHz licensing policy, including the decision to dismiss, without prejudice, all pending mutually exclusive 39 GHz applications where mutual exclusivity was not resolved by December 15, 1995, and all amendments to resolve mutual exclusivity filed on after December 15, 1995.⁹

6. *Discussion.* Astrolink argues that its September 23, 1998 amendment should have been held in abeyance in accordance with the *NPRM and Order*, rather than dismissed, because the *Report and Order and Second NPRM* was the subject of petitions for reconsideration.¹⁰ In the *Memorandum Opinion and Order* that addressed the outstanding petitions for reconsideration, the Commission upheld the application processing policy set forth in the *Report and Order and Second NPRM*.¹¹ We conclude that the Commission's action renders Astrolink's argument moot, and we affirm the Branch's dismissal of Astrolink's late-filed amendment.

7. 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 Astrolink on April 5, 1999, IS DENIED. This action is taken under the 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

⁶Letter from E. Ashton Johnston, counsel for Astrolink, to Microwave Branch, Wireless Telecommunication Bureau (filed Sept. 23, 1998).

⁷Letter from Mary M. Schultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to E. Ashton Johnston, counsel for Astrolink (Mar. 3, 1999).

⁸Astrolink Petition at 2.

⁹See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, ET Docket No. 95-193, 14 FCC Rcd 12428, 12445-48 ¶¶ 29-38 (1999) (*July 29 MO&O*).

¹⁰Astrolink Petition at 2.

¹¹*July 29 MO&O*, 14 FCC Rcd at 12445-48 ¶¶ 29-38.