

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

In the Matter of Applications of)
)
BACHOW COMMUNICATIONS, INC.) FCC File Nos. 9409306, 9409308, 949309,
) 9409310, 9409312, 9409313, 9409314,
) 9409316, 9409322, 9409323, 9409326,
) 9409327, 9409328, 9409330, 9409411
)
To Provide 39 GHz Point-to-Point Microwave)
Service in the Areas of Seattle, Washington;)
Philadelphia, Pennsylvania; Denver, Colorado;)
Phoenix, Arizona; Chicago, Illinois; San Francisco,)
California; Kansas City, Missouri; Dallas, Texas;)
Detroit, Michigan; Minneapolis, Minnesota; New)
York, New York (New Jersey); New York, New)
York (Long Island); Cleveland, Ohio; Pittsburgh,)
Pennsylvania and St. Louis, Missouri)

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 2000

Released: May 22, 2000

Before the Commission:

1. The Commission has before it an Application for Review filed by Bachow Communications, Inc. (Bachow) on December 23, 1999.1 Bachow requests reconsideration of the dismissal of fifteen applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band. On November 23, 1999, the Public Safety and Private Wireless Division Licensing and Technical Analysis Branch (Branch) dismissed twelve Bachow applications.2 On December 8, 1999, the Public Safety and Private Wireless Division (Division) dismissed three Bachow applications.3

1 Bachow filed an erratum on December 28, 1999, adding FCC File Nos. 9409308, 9409326 and 9409327 to the Application for Review.

2 FCC File Nos. 9409306, 9409309, 9409310, 9409312, 9409313, 9409314, 9409316, 9409322, 9409323, 9409328, 9409330 and 9409411. See Public Notice, 39 GHz Applications Dismissed, DA 99-2631 (rel. Nov. 23, 1999).

3 FCC File Nos. 9409308, 9409326 and 9409327. See Advanced Radio Technology Corp., American Personal Communications, Bachow Communications, Inc. DCT Communications, Inc., WinStar Wireless Fiber Corp., Order, DA 99-2740 (rel. Dec. 8, 1999).

2. Bachow provided three attachments with its Application for Review. Bachow's first two attachments were two motions for dismissal *nunc pro tunc* or for declaratory ruling regarding two WinStar Wireless Fiber Corp. applications.⁴ These motions were granted by the Branch in a February 4, 2000 letter.⁵ The third attachment was a motion requesting partial grant of its 39 GHz application to provide service in the area of Seattle, Washington (Motion for Partial Grant).⁶ The Branch dismissed the Motion for Partial Grant on January 12, 2000. On January 27, 2000, Bachow filed a supplement to its Application for Review (Supplement), requesting review of the Branch's dismissal of its Motion for Partial Grant.

3. We have analyzed the Application for Review and find that the Commission staff 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, 1995.⁷ In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.⁸ Therefore, we uphold the staff decision for the reasons stated therein with regards to the three applications which the Division dismissed on December 8, 1999. There is no reason to disturb it.

4. The Branch dismissed twelve applications because the mutual exclusivity involving these applications was not resolved by December 15, 1995. Therefore, we uphold the staff decision. There is no reason to disturb it.

5. We have also analyzed the Supplement and find that the Branch properly denied Bachow's Motion for Partial Grant. Bachow's Supplement is, in effect, a request to amend its Seattle application to eliminate the overlap with a WinStar Wireless, Inc. 39 GHz application to provide service in the area of Tacoma, Washington.⁹ As stated above, the Commission has established and affirmed guidelines regarding amendments to 39 GHz applications and Bachow's request to amend is untimely. Therefore, the Branch acted properly in dismissing Bachow's Motion for Partial Grant.

⁴ FCC File Nos. 9404172 and 9404190.

⁵ See Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Bachow Communications, Inc. (Feb. 4, 2000).

⁶ FCC File No. 9409306.

⁷ 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, 18639-45 ¶¶ 83-97 (1997) (*R&O and Second NPRM*); *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).

⁸ 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).

⁹ See Bachow Supplement to Application for Review at 3-5.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5) and Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review filed on December 23, 1999 and the Supplement to the Application for Review filed on January 27, 2000 by Bachow Communications, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary