

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

In the Matter of Applications of)	
)	
CAMBRIDGE PARTNERS, INC.)	File Nos. 9601236, 9601372 and 9601240
)	
To Provide 39 GHz Point-to-Point Microwave)	
Service in the Areas of Palm Springs, California,)	
Montgomery, Alabama and Fredericksburg,)	
Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: August 24, 2000

Released: September 15, 2000

By the Commission:

1. The Commission has before it an Application for Review filed by Cambridge Partners, Inc. (Cambridge) on May 10, 2000. Cambridge requests reconsideration of an April 10, 2000 *Order*¹ by the Wireless Telecommunications Bureau Public Safety and Private Wireless Division dismissing the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.²

2. 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, 1995.³ In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.⁴

¹ See Cambridge Partners, Inc., *Order on Reconsideration*, DA-804 (WTB PSPWD rel. Apr. 10, 2000).

² See Cambridge Partners, Inc., Application for Review (filed May 10, 2000) (Application for Review).

³ 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); *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).

⁴ 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. The above-referenced applications were dismissed because they violated the 39 GHz processing policy. Specifically, two applications were dismissed as untimely because they were mutually exclusive with other applications and filed beyond the sixty-day cut-off date.⁵ The remaining application was mutually exclusive with another application and the mutual exclusivity was not resolved by December 15, 1995.⁶ Additionally, the amendments filed by Cambridge to resolve the mutual exclusive situations were filed after December 15, 1995. Therefore, we uphold the staff decision for the reasons stated therein. There is no reason to disturb it.

4. In the alternative, Cambridge requests a stay of the *Order*,⁷ pending the completion of a multi-party appeal of the 39 GHz policies currently before the United States Circuit Court for the District of Columbia.⁸ To receive a stay of an administrative action a party must show that: 1) it will suffer irreparable harm if the stay is not granted, 2) it is likely to prevail on the merits of its appeal, 3) the grant of stay will not harm the other interested parties, and 4) the grant would serve the public interest.⁹ Cambridge argues that a stay of the *Order* would serve the public interest by eliminating the need for duplicative litigation and remove uncertainties as to the availability of the subject frequency assignments with respect to the conflicting license rights that may attach as a result of the 39 GHz auction.¹⁰ We disagree.

5. First, the plain language of the test to receive a stay of a Commission action provides that a stay request shall be granted only upon a finding that all four conditions are satisfied.¹¹ Where any one of the four conditions is not satisfied, the subject stay request will not be granted. Cambridge fails to address the first three prongs of this test. As a result, Cambridge cannot satisfy the requirements for a stay.

6. Second, Cambridge argues that the public interest benefits support the grant of a stay in this matter. Again, we disagree. We are not persuaded that Cambridge's alleged injuries are sufficient to warrant a stay. In this connection, we note that consolidating this matter with the related proceedings before the court would not be duplicative. Moreover, if Cambridge wholly prevails in its judicial appeal of the Commission's decision, then we would "forthwith give effect thereto."¹² Finally, we believe that reinstating Cambridge's application would frustrate the goals underlying the 39 GHz proceeding and "could lead to results inconsistent with our intent . . . to update the regulatory structure of the 39 GHz band in

⁵ FCC File Nos. 96001236 and 9601372.

⁶ FCC File No. 9601240.

⁷ See Cambridge Partners, Inc., *Order on Reconsideration*, DA-804 (WTB PSPWD rel. Apr. 10, 2000).

⁸ See *Bachow Communications, Inc. v. FCC*, Case No. 99-1346 (consolidating Case Nos. 99-1361 and 1362).

⁹ See *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 291 (D.C. Cir. 1958), as revised by the *Washington Metropolitan Area Transit System v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

¹⁰ Application for Review at 6-7.

¹¹ See *Washington Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985).

¹² See 47 U.C.C. § 402(h).

light of contemporary market conditions."¹³

7. In light of the above, we find that Cambridge has not shown an injury warranting injunctive relief.¹⁴ Accordingly, we deny Cambridge's request for stay.

8. 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 by Cambridge Partners, Inc. on May 10, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹³ *July 29 MO&O*, 14 FCC Rcd at 12437-38; *Report and Order and Second NPRM*, 12 FCC Rcd at 2917 ¶ 15; *NPRM and Order*, 11 FCC Rcd at 4988-89 ¶¶ 121-124.

¹⁴ *Washington Gas Co. v. FERC*, 758 F.2d 669