

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

In the Matter of the Application of)	
)	
CAMBRIDGE PARTNERS, INC.)	File No. 9601375
)	
For Authority to Construct and Operate 38.6 -)	
40.0 GHz Microwave Radio Service Network)	
in Belleville, IL)	

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 2000

Released: January 9, 2001

By the Commission:

1. The Commission has before it an Application for Review filed by Cambridge Partners, Inc. (Cambridge) on July 24, 2000. Cambridge requests review of a June 23, 2000, *Order on Reconsideration* by the Public Safety and Private Wireless Division dismissing the above-captioned application for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.¹

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, 1995.² In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.³

3. Commission staff dismissed Cambridge's application for authorization to provide service in the 39 GHz band because it did not meet the 30-day Public Notice requirement as of November 13, 1995. Therefore, we uphold the staff decision for the reasons stated therein. There is no reason to disturb it.

¹ See In the Matter of the Application of Cambridge Partners, Inc., *Order on Reconsideration*, DA 00-1397 (WTB PSPWD rel. June 23, 2000).

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, 18639-45 ¶¶ 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).

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).

4. In the alternative, Cambridge requests a stay of the *Order*,⁴ 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.⁵ 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 be in the public interest.⁶ 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 rights that may attach as a result of the 39 GHz auction.⁷ 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.⁸ Thus, where any one of the four conditions is not satisfied, the subject 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 related proceedings before the court would be duplicative. Moreover, if Cambridge wholly prevails in its judicial appeal of the Commission's decision, then we would "forthwith give effect thereto."⁹ Finally, we believe that reinstating Cambridge's application would frustrate the underlying 39 GHz proceeding and "could lead to results inconsistent with our intent . . . to update the regulatory structure of the 39 GHz band in light of contemporary market conditions."¹⁰

7. In light of the above, we find that Cambridge has not shown any injury warranting injunctive relief.¹¹ Accordingly, we deny Cambridge's request for a stay of the *Order*.

⁴ Cambridge Partners, *Order on Reconsideration*, DA 00-1397 (PSPWD WT rel. Jun. 23, 2000).

⁵ See *Bachow Communications, Inc. v. FCC*, Case No. 991346 (consolidating Case Nos. 99-1361 and 99-1362).

⁶ See *Virginia Petroleum Jobbers Association v. FPC*, 259 F. 291 (D.C. Cir. 1958), as revised by *Washington Metropolitan Area Transit System v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

⁷ See Application for Review at 5.

⁸ See *Washington Gas v. FERC*, 758 F.2d 669 (D.C. Cir. 1985).

⁹ See 47 U.S.C. § 402(h).

¹⁰ *July 29 MO&O*, 14 FCC Rcd at 1437-38; Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 12 FCC Rcd 2910, 2917 ¶ 15 (1997); Amendment 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*, 11 FCC Rcd 4930, 4988-89 ¶¶ 121-124 (1996).

¹¹ *Washington Gas v. FERC*, 758 F.2d at 669.

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 July 24, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary