

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

In the Matter of Application of	)	
	)	
PLAINCOM, INC.	)	File No. 9600358
	)	
For Authority to Establish New Point-to-Point Microwave Facilities in the 39 GHz Frequency Band in the Area of Kalamazoo, Michigan	)	

**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 Plaincom, Inc. (Plaincom) on June 22, 2000. Plaincom requests Commission review of a May 23, 2000 *Order*<sup>1</sup> by the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau dismissing the above-captioned application for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band in the area of Kalamazoo, Michigan.<sup>2</sup>

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.<sup>3</sup> In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.<sup>4</sup>

3. Plaincom's Kalamazoo application was dismissed because it violated 39 GHz processing

<sup>1</sup> See Plaincom, Inc., *Order on Reconsideration*, DA 00-1129 (WTB PSPWD rel. May 23, 2000).

<sup>2</sup> See Plaincom, Inc., Application for Review, (filed June 22, 2000).

<sup>3</sup> 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, 18639-97 ¶¶ 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).

<sup>4</sup> 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).

policy. Specifically, the application was part of a “daisy chain”<sup>5</sup> of applications in that the proposed facilities geographically overlapped those described in an application filed by No Wire, L.L.C. (No Wire)<sup>6</sup> and No Wire’s application geographically overlapped an application filed by Telecom One, Inc. (TCO).<sup>7</sup> TCO’s application, which was the first-filed application in the daisy chain, was placed on public notice on June 21, 1995.<sup>8</sup> Although Plaincom’s application did not geographically overlap TCO’s application, it was mutually exclusive with No Wire’s application. Therefore, TCO’s application established the applicable cut-off date for Plaincom’s Kalamazoo application. Plaincom filed its Kalamazoo application on October 6, 1995, well beyond the sixty-day cut-off date established by the TCO application. As the Commission staff determined below, the March 1999 dismissal of the No Wire application has no effect because the relevant date for the Commission’s 39 GHz processing policy was December 15, 1995. As of that date, the Plaincom application was mutually exclusive with the No Wire application and was therefore properly dismissed. We have previously held that the cure of mutual exclusivity after December 15, 1995 does not provide a basis for reinstating an application.<sup>9</sup> Therefore, we uphold the staff decision for the reasons stated therein. There is no reason to disturb it.

4. 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 of the Commission’s Rules, 47 C.F.R. § 1.115, the Application for Review filed by Plaincom, Inc. on June 22, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>5</sup> Daisy chains occur when an application is mutually exclusive, *i.e.* would cause interference, with an application in an adjacent community, which is mutually exclusive with an application in another adjacent community, and so on. Low Power Television and Television Translator Service, *Report and Order*, MM Docket No. 83-1350, 57 Rad. Reg. 2d 234 (P&F 1984).

<sup>6</sup> FCC File No. 9509284.

<sup>7</sup> FCC File No. 9506015.

<sup>8</sup> Public Notice, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1140 (rel. June 21, 1995).

<sup>9</sup> *See* Plaincom, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 11889 (rel. June 28, 2000).