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

In the Matter of	)	
	)	
DCT GREATER PHILADELPHIA, LLC	)	FCC File Nos. 9505456, 9505449, 9505462
DCT TRANSMISSION, LLC	)	
	)	
ADVANCED RADIO TECHNOLOGIES CORP.	)	FCC File No. 9404184
	)	
Applications for 39 GHz Point-to-Point	)	
Microwave Radio Station Authorizations	)	

ORDER ON RECONSIDERATION

Adopted: July 7, 2000 **Released: July 12, 2000**

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On January 7, 2000, DCT Greater Philadelphia, LLC, and DCT Transmission, LLC (DCT),[1] and Advanced Radio Technologies Corp. (ART) (collectively, Petitioners) filed petitions for reconsideration of a December 8, 1999, Public Safety and Private Wireless Division (Division) *Order* dismissing the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.[2] For the reasons that follow, we deny the reconsideration petitions and affirm the Division's decision.

II. BACKGROUND

2. Prior to June 1994, Petitioners, along with American Cellular Network Corporation, American Personal Communications, Avant-Garde Telecommunications, Inc. (now WinStar Wireless Fiber Corp. (WinStar)), and Biztel, Inc., submitted mutually exclusive applications for new microwave facilities

[1] On November 14, 1997, DCT amended its New York application to specify a new entity as the applicant, DCT Transmission, LLC. DCT amended its Philadelphia and Trenton applications on December 9, 1997, to specify a new entity as the applicant, DCT Greater Philadelphia, LLC. Hereinafter, we will refer to both entities as DCT.

[2] Advanced Radio Technologies, *et al.*, *Order*, 14 FCC Rcd 20744 (WTB PSPWD 1999) (*Order*).

in the 39 GHz band. On June 3, 1994, these applicants entered into a Settlement Agreement intending to resolve the mutual exclusivity among their applications.[3]

3. On November 13, 1995, the Wireless Telecommunications Bureau (Bureau) issued an *Order* which froze acceptance of new 39 GHz applications.[4] On December 15, 1995, the Commission expanded upon the Bureau *Order* by distinguishing between those pending 39 GHz applications that would be processed and those that would be held in abeyance pending the outcome of the rule making proceeding.[5] On January 17, 1997, the Commission stated that the non-mutually exclusive portion of certain pending applications requesting multiple channels would be processed.[6] On November 3, 1997, the Commission, *inter alia*, dismissed without prejudice all pending 39 GHz applications that were: (a) mutually exclusive; and (b) applications that were not yet on public notice, or for which the 60-day cut-off period for filing competing applications had not been completed prior to November 13, 1995.[7] Subsequently, on July 29, 1999, the Commission affirmed its licensing approach, and amended its processing policy by deciding to process all 39 GHz applications that satisfied the thirty-day public notice requirement.[8]

4. In the *Order*, the Division dismissed the Settlement Agreement because it determined that the mutual exclusivity among the applications that are the subject of the Settlement Agreement was not entirely resolved.[9] The Division also determined that certain of the subject applications were mutually exclusive with applications filed by entities who were not parties to the Settlement Agreement.[10] Accordingly, because the Settlement Agreement did not resolve mutual exclusivity among competing

[3] Settlement Agreement Among 38.6-40.0 GHz Applicants (filed Jun. 3, 1994).

[4] Petition for Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, RM-8553, *Order*, 11 FCC Rcd 1156 (WTB 1995). The *Order* was issued in response to a petition for rule making, filed by the Telecommunications Industry Association (TIA) on September 9, 1994, which proposed a modification of the rules governing the 39 GHz band in order to increase the variety of possible uses on the band. TIA Petition for Rule Making, RM-8553 (filed Sep. 9, 1994); TIA Amendment to Petition for Rule Making, RM-8553 (filed May 4, 1995).

[5] Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Notice of Proposed Rule Making and Order*, 11 FCC Rcd 4930, 4988-89 ¶ 122 (1995).

[6] Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Memorandum Opinion and Order*, 12 FCC Rcd. 2910 (1997) (*Jan. 17 MO&O*).

[7] Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, RM-8553; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands, PP Docket No. 93-253, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18641-45 ¶¶ 88-97 (1997) (*Report and Order and Second NPRM*).

[8] Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, RM-8553; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands, PP Docket No. 93-253, *Memorandum Opinion and Order*, 14 FCC Rcd 12428, 12449 ¶¶ 35-36 (1999) (*July 29 MO&O*).

[9] *Order*, 14 FCC Rcd at 20746 ¶ 3.

[10] *Id.*

applications, the Division determined that approval of the Settlement Agreement would not further the public interest.[11]

5. *ART application.* On December 13, 1993, ART submitted an application for authorization for Channels 2A/B, 3A/B, 4A/B, 6A/B, 8A/B, 12A/B and 13A/B, in Philadelphia, PA.[12] On March 4, 1994, WinStar submitted an application for authorization on Channels 2A/B, 3A/B and 12A/B in Philadelphia, PA,[13] which was placed on public notice on July 6, 1994.[14] As noted, on June 3, 1994, the Settlement Agreement was signed. On July 21, 1994, ART filed an amendment to remove Channels 4A/B, 6A/B, 8A/B, 12A/B, and to add a request for Channel 10A/B. This amendment was conditioned on Commission acceptance of the Settlement Agreement. On June 22, 1994, WinStar submitted an amendment requesting the withdrawal of its Philadelphia application as to Channels 2A/B, 3A/B and 12A/B. On October 21, 1994, ART filed an amendment requesting only Channel 2A/B.[15] WinStar's Philadelphia application was dismissed on May 15, 1995.[16] On June 5, 1995, WinStar submitted a Request for Reinstatement *nunc pro tunc* (Request) of its Philadelphia application.[17] WinStar argued that its request to withdraw the application was contingent upon Commission acceptance of the Settlement Agreement.[18] Upon dismissing the Settlement Agreement in the *Order*, the Division granted WinStar's Request for Reinstatement and dismissed the ART and WinStar applications as to Channel 2A/B on the basis of mutual exclusivity.[19] The Division also stated that it would conduct further review and processing of the non-mutually exclusive portion of WinStar's application, specifically the request for authorization on Channel 3A/B.[20]

6. *DCT applications.* On March 4, 1994, WinStar filed an application for authorization for Channels 2A/B, 5A/B, and 12A/B in New York, NY.[21] On April 12, 1994, DCT submitted an application

[11] *Id.*

[12] FCC File No. 9402080.

[13] FCC File No. 9404184.

[14] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1090 (rel. Jul. 6, 1994).

[15] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1117 (rel. Jan. 11, 1995).

[16] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1136 (rel. May 24, 1995).

[17] Request for Reinstatement *Nunc Pro Tunc* of Application, FCC File No. 9404184 (filed Jun. 15, 1995).

[18] *Id.* at pp. 1-2.

[19] *Order*, 14 FCC Rcd at 20748 ¶ 6.

[20] *Id.*; *see Report and Order and Second NPRM*, 12 FCC Rcd at 18645 ¶ 97.

[21] FCC File No. 9404182; *see Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1090 (rel. Jul. 6, 1994).

for authorization on Channels 4A/B and 13A/B in New York, NY.[22] On October 21, 1994, DCT filed an amendment to its New York application to request only Channel 2A/B.[23] Because DCT's original application did not contain a request for Channel 2A/B, it was deemed that DCT's October 21, 1994, amendment requesting Channel 2A/B was a major amendment pursuant to Sections 101.29(c)(1)(i) and 101.45(c) of the Commission's Rules.[24] Thus, DCT's application received a new filing date of October 21, 1994,[25] which was more than sixty days after the July 6, 1994, public notice announcing the acceptance of WinStar's applications for filing. Accordingly, in the *Order*, the Division dismissed DCT's late-filed competing New York application pursuant to Section 101.45(e) of the Commission's Rules.[26]

7. As previously indicated, on March 4, 1994, WinStar filed an application for 39 GHz authorization on Channels 2A/B, 3A/B, and 12A/B in Philadelphia,[27] which was placed on public notice on July 6, 1994.[28] On April 12, 1994, DCT submitted applications for authorization in the area of Philadelphia, PA, on Channels 2A/B, 3A/B, 4A/B, and 13A/B,[29] and in the area of Trenton, NJ, on Channels 2A/B, 3A/B, 4A/B, and 6A/B.[30] As noted, on June 3, 1994, the Settlement Agreement was signed. On June 22, 1994, DCT filed an amendment, which was conditioned on Commission acceptance of the Settlement Agreement, to remove Channels 4A/B and 6A/B from its application in the Trenton market.[31] On October 21, 1994, DCT amended its Trenton and Philadelphia applications to request only Channel 2A/B in each market.[32] In the *Order*, the Division dismissed DCT's applications and WinStar's Philadelphia application as to Channel 2A/B because they were mutually exclusive.[33] As noted before, the Division also stated that it would conduct further review and processing of the non-mutually exclusive portion of WinStar's Philadelphia application, specifically the request for authorization on Channel 3A/B.[34]

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[22] FCC File No. 9405456.

[23] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1117 (rel. Jan. 11, 1995).

[24] 47 C.F.R. §§ 101.29(c)(1)(i), 101.45(c) (formerly 47 C.F.R. §§ 22.131 and 22.122, respectively).

[25] 47 C.F.R. §§ 101.37(1) (formerly 47 C.F.R. §§ 22.127).

[26] *Order*, 14 FCC Rcd at 20750 ¶ 8.

[27] FCC File No. 9404184.

[28] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1090 (rel. Jul. 6, 1994).

[29] FCC File No. 9405449.

[30] FCC File No. 9405462; *see Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1089 (rel. Jun. 29, 1994).

[31] This amendment has not been accepted as a result of our dismissal of the Settlement Agreement.

[32] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1117 (rel. Jan. 11, 1995).

[33] *Order*, 14 FCC Rcd at 20751-52 ¶ 9.

[34] *Id.*

III. DISCUSSION

8. *DCT Petition.* DCT argues that the Division's dismissal of the Settlement Agreement violates Section 309(j)(6)(E) of the Communications Act of 1934, as amended (Communications Act),[35] which states that, in determining the auctionability of applications, the Commission has the "obligation in the public interest to continue to use engineering solutions, negotiations, threshold qualifications, service regulations, and other means to avoid mutual exclusivity in application and licensing proceedings."[36] As previously interpreted by the Commission, Section 309(j)(6)(E) requires an attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3) of the Communications Act.[37] We note that the Settlement Agreement was designed "to eliminate any mutual exclusivity that may currently exist among pending applications."[38] Thus, the parties to the Settlement Agreement availed themselves of the opportunity to resolve the mutual exclusivity amongst the pending applications. Yet, as previously indicated, mutual exclusivity still existed among the applications that were subject to the Settlement Agreement. Furthermore, mutual exclusivity existed between subject applications and applications filed by entities who were not parties to the Settlement Agreement. Based on the foregoing, we conclude that the public interest goals of Section 309(j)(3) of the Communications Act would not have been furthered by approving the Settlement Agreement. Therefore, by dismissing the Settlement Agreement, we believe that the Division fulfilled its obligation under Section 309(j)(6)(E) of the Communications Act.

9. DCT further argues that Commission precedent dictates that we accept this Settlement Agreement, and the underlying modification applications, even though its purpose was not fully effectuated.[39] We believe that it is folly to point to the Commission acceptance of previous partial settlements as a reason for accepting this particular Settlement Agreement. Joint agreements are evaluated

[35] DCT Petition for Reconsideration at 4.

[36] 47 U.S.C. § 309(j)(6)(E).

[37] *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99-98 (1999) (*Paging MO&O*). *See also DIRECTV v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997) ("Nothing in § 309(j)(6)(E) requires the FCC to adhere to a policy that it deems outmoded 'to avoid mutual exclusivity in . . . licensing proceedings'"); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, 12 FCC Rcd 19079, 19104, 19154 ¶¶ 62, 230 (1997); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972, 10009-10 ¶ 115 (1997) (Section 309(j)(6)(E) does not prohibit the Commission from conducting an auction without first attempting alternative licensing mechanisms to avoid mutual exclusivity).

[38] Settlement Agreement Among 38.6-40.0 GHz Applicants at 1.

[39] DCT Petition for Reconsideration at 5.

on a case-by-case basis by the Commission.[40] In this case, for reasons that were set forth in the *Order*, the Division determined that acceptance of the Settlement Agreement was not in the public interest.

10. DCT contends that when making its decision to dismiss the Settlement Agreement, the Division ignored the agreement's key provisions.[41] In this connection, DCT contends that acceptance of the severability clause and other key provisions which recognize that the Settlement Agreement may be imperfect, would enable the Division to process DCT's Philadelphia and Trenton applications.[42] We disagree. The Division did not dismiss the Settlement Agreement because it contained an unenforceable or invalid provision which could be severed. The Division dismissed the Settlement Agreement because the public interest would not be served by its acceptance given its failure to eliminate mutual exclusivity that existed among pending applications. We note that at the beginning of the Settlement Agreement, there is a key provision which recognizes that this Agreement is "subject to the *approval of the Commission . . .*"[43] Another provision states that "(t)he Amendments and withdrawal of the petitions to deny shall be conditional only upon *Commission approval* of this Agreement."[44] DCT, which now views these particular provisions as immaterial, argues that enforceability of the Settlement Agreement was not dependent on Commission approval.[45] DCT bases this argument on its interpretation of Section 21.29 of the Commission's Rules, which at the time of the Settlement Agreement was the rule that governed agreements to amend applications.[46] We disagree with DCT's interpretation. Section 21.29(b)(1) of the Commission's Rules states that the provisions of this section shall not apply to any agreement which "resolves frequency conflicts."[47] As indicated, frequency conflicts were left unresolved by the Settlement Agreement. Therefore, we find that Section 21.29(b)(1) of the Commission's Rules did not prevent the Division from exercising its authority to review, and subsequently dismiss the Settlement Agreement on public interest grounds pursuant to Section 21.29(e) of the Commission's Rules.[48]

11. Before the dismissal of the Settlement Agreement, nineteen of the twenty-nine applications covered by the Agreement were granted, dismissed, or withdrawn. DCT believes that the grant of some of these applications was done consistent with the Settlement Agreement, and thus, the Division's rationale for

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[40] *See* Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, *Memorandum Opinion and Order*, 5 FCC Rcd 3902, 3904 ¶ 14 (1990) (*citing* Western Connecticut Broadcasting Co., *Memorandum Opinion and Order*, 88 FCC 2d 1492 (1982) (settlements in comparative renewal proceedings would be considered on a case-by-case basis)).

[41] DCT Petition for Reconsideration at 8.

[42] *Id.* at 9.

[43] Settlement Agreement Among 38.6-40.0 GHz Applicants at 1 (*emphasis added*).

[44] *Id.* at 2 (*emphasis added*).

[45] DCT Petition for Reconsideration at 14.

[46] *Id.* The current rule that governs agreements to amend application is Section 1.935 of the Commission's Rules. 47 C.F.R. § 1.935 (1999).

[47] 47 C.F.R. § 21.29(b)(1) (1994).

[48] 47 C.F.R. § 21.29(e) (1994).

dismissing the Settlement Agreement was compromised.[49] Prior to the *Order*, the Division only granted amended applications that were not conditioned on approval of the Settlement Agreement, resolved a frequency conflict, and were consistent with our 39 GHz licensing policy.[50] In other words, the amended applications that were granted would have received the same processing treatment regardless of the existence of the Settlement Agreement.

12. DCT also argues that the Division acted arbitrarily and capriciously when it dismissed the applications that were subject to the Settlement Agreement without first considering alternative measures, such as providing the parties an opportunity to cure the apparent defects in the Settlement Agreement and to amend the subject applications.[51] We disagree with DCT's claim that the Division acted arbitrarily and capriciously. In the *Order*, the Division provided a reasoned explanation for its decision to dismiss the Settlement Agreement and certain of the underlying applications. Furthermore, we do not believe that the Division is required to foster settlement agreements among applicants who submitted applications under the former 39 GHz processing rules and policies.[52]

13. As indicated earlier, on October 21, 1994, DCT filed an amendment to its New York application in order to request only Channel 2A/B.[53] Because DCT's original application did not contain a request for Channel 2A/B, it was deemed that its October 21, 1994, amendment requesting Channel 2A/B was a major amendment pursuant to Sections 101.29(c)(1)(i) and 101.45(c) of the Commission's Rules.[54] Thus, DCT's application received a new filing date and was dismissed as a late-filed competing application pursuant to Section 101.45(e) of the Commission's Rules.[55] DCT states that this application should not have been dismissed because the October 21, 1994, amendment requesting a previously unproposed channel pair was a typographical error.[56] DCT argues for reinstatement of its New York application and permission to choose one of the original channel pairs, Channels 4A/B or 13A/B.[57] Pursuant to the Commission's Rules, amendments merely correcting typographical, transcription, or similar clerical errors, which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create any new frequency conflicts, are not to be considered newly filed applications.[58] We find that there was no unmistakable evidence within the four corners of the application, which would

[49] DCT Petition for Reconsideration at 10.

[50] *See Report and Order and Second NPRM*, 12 FCC Rcd at 18641-45 ¶¶ 88-97; *July 29 MO&O*, 14 FCC Rcd at 12449 ¶¶ 35-36.

[51] DCT Petition for Reconsideration at 10.

[52] *See July 29 MO&O*, 14 FCC Rcd at 12450 ¶ 38.

[53] *Public Notice*, Wireless Telecommunications Bureau Part 21 Receipts and Disposals, Report No. 1117 (rel. Jan. 11, 1995).

[54] 47 C.F.R. §§ 101.29(c)(1)(i), 101.45(c) (formerly 47 C.F.R. §§ 22.131 and 22.122, respectively).

[55] *Order*, 14 FCC Rcd at 20750 ¶ 8.

[56] DCT Petition for Reconsideration at 11.

[57] *Id.* at 12.

[58] 47 C.F.R. § 101.45(f)(5).

have caused the Division to conclude that the request for a new channel pair in the amendment of October 21, 1994, was a typographical error.[59] Therefore, we affirm the Division's decision to dismiss DCT's New York application.

14. Finally, DCT argues that the *Order* is flawed because its conclusions are based on the decisions that were reached in the ET Docket No. 95-183 proceeding, which is currently under review before the U.S. Court of Appeals for the D.C. Circuit.[60] DCT believes that the D.C. Circuit will overturn the decisions that were reached in this proceeding.[61] We do not believe that DCT's anticipatory holding of a D.C. Circuit case that has yet to be decided forms a sufficient basis for granting DCT's requested relief. We conclude that the Division's decision regarding treatment of the subject applications was consistent with the Commission's decision in ET Docket No. 95-183, which was binding precedent on the Division.[62]

15. *ART Petition.* As previously indicated, on October 21, 1994, ART amended its Philadelphia application when it requested authorization for only Channel 2A/B. ART states that it reduced its channel request from three to one in order to comply with the Commission's September 16, 1994, *Public Notice* (*Public Notice*),[63] which contained a policy statement that, *inter alia*, imposed a spectrum cap on applicants for certain 39 GHz services.[64] WinStar did not follow this policy statement and instead, maintained its request for three 39 GHz channels in Philadelphia, including Channel 2A/B. The Division dismissed ART's application and WinStar's as to Channel 2A/B because they were mutually exclusive, yet allowed the non-mutually exclusive portion of WinStar's application to be subject to further processing and review.[65] ART argues that fairness dictates that we apply the policy statement in the *Public Notice* to WinStar's Philadelphia application as well, thereby reducing the application to a single non-mutually exclusive channel (Channel 3A/B).[66] ART states that this action would eliminate any mutual

[59] *See* Application of Plaincom, Inc., *Order on Reconsideration*, 14 FCC Rcd 17628, 17630 ¶ 5 (1999).

[60] DCT Petition for Reconsideration at 14.

[61] *Id.* at 14-15.

[62] See *July 29 MO&O*, 14 FCC Rcd 12428; *Report and Order and Second NPRM*, 12 FCC Rcd 18600.

[63] ART Petition for Reconsideration at 5.

[64] Policy Governing the Assignment of Frequencies in the 38 GHz and Other Bands to be Used in Conjunction with PCS Support Spectrum, *Public Notice*, Mimeo No. 44787 (rel. Sep. 16, 1994) (*Public Notice*).

[65] *Order*, 14 FCC Rcd at 20748 ¶ 6.

[66] ART Petition for Reconsideration at 4. ART contends that on November 9, 1999, in a case that pertained to other WinStar applications, the Commission reduced WinStar's multiple channel requests to a single channel in accordance with the *Public Notice*. *Id.* We find that in this particular case, WinStar voluntarily reduced its applications' multiple channel requests to a single channel when it sent a letter on July 17, 1995, which informed the Bureau that there was one clean channel pair among the requested channels. The letter was not submitted in response to the *Public Notice*. Applications of WinStar Wireless, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 20533, 20534 ¶ 4 (1999). The letter's purpose was merely "to expedite grant of the pending applications." *Id.* at 20536 ¶ 9. More importantly, the Bureau did not reduce the applications' channel requests on its own motion.

exclusivity regarding Channel 2A/B and, thus, the Commission would be able to reinstate and grant its amended application.[67]

16. The policy statement in the *Public Notice* was issued pursuant to an outmoded 39 GHz licensing policy,[68] and thus, we do not believe that fairness dictates that we apply it to WinStar's Philadelphia application. Furthermore, contrary to what ART contends, the policy statement does not require applicants to specify a single frequency. Rather, it provides that "*normally*, only one frequency or pair of frequencies will be authorized per application per geographic area."[69] Therefore, we find that WinStar's Philadelphia application was not defective solely because it requested multiple channel pairs. For the foregoing reasons, we deny ART's petition for reconsideration.

IV. ORDERING CLAUSES

17. 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 DCT Greater Philadelphia, LLC and DCT Transmission, LLC on January 7, 2000 IS DENIED.

18. IT IS FURTHER 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 Advanced Radio Technologies Corp. on January 7, 2000 IS DENIED.

19. This action is taken under 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

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau

[67] ART Petition for Reconsideration at 4.

[68] *See July 29 MO&O*, 14 FCC Rcd at 12450 ¶ 38.

[69] *Public Notice* at 2 (*emphasis added*).