

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

In the Matter of Applications of)	
)	
ADVANCED RADIO TELECOM CORP.)	File No. 0000138811
)	
CT COMMUNICATIONS, INC.)	File No. 0000132638
)	
For Authority to Construct and Operate)	
Facilities in the 39 GHz Band)	

ORDER

Adopted: October 2, 2000

Released: October 3, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On September 25, 2000, Broadband Wireless Access Services (Broadband), Stevan A. Birnbaum (Birnbaum), Cambridge Partners, Inc. (Cambridge), Linda Chester (Chester), HiCap Networks, Inc. (HiCap), William R. Lonergan (Lonergan), PIW Development Corporation (PIW), Paul R. Likins (Likins), Cornelius T. Ryan (Ryan), Southfield Communications LLC (Southfield), SMC Associates (SMC), Video Communications Corporation (VideoCom), and Wireless Telco joined in various petitions to condition authorization of the above-captioned applications to the extent that these applications for authorization to operate in the 38.6-40.0 GHz (39 GHz) band conflict with their previously dismissed 39 GHz applications. These petitions are identical with regard to the issues. Accordingly, for the reasons that follow, we consolidate and dismiss these petitions to condition authorization of the applications of Advanced Radio Telecom Corp. (ART),¹ and CT Communications, Inc. (CTC).²

2. *Background.* The petitioners have appealed the dismissal of their mutually exclusive 39 GHz applications that were filed prior to the adoption of competitive bidding rules for the 39 GHz band to the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit).³ On January 21, 2000, the Commission placed potential bidders to the 39 GHz band auction (Auction No. 30) on notice that certain decisions reached in

¹ The petitioners filing against the ART application, File No. 0000138811, are Broadband, Birnbaum, Cambridge, HiCap, Lonergan, PIW, Likins, Ryan, Southfield, SMC, VideoCom, and Wireless Telco. Petition to Condition Authorization of Application of Advanced Radio Telecom Corp. (dated September 25, 2000) (Petition to Condition Authorization of ART).

² The petitioners filing against the CTC application, File No. 0000132638, are Cambridge, Chester, PIW, Likins and Southfield. Petition to Condition Authorization of Application of CT Communications, Inc. (dated September 25, 2000) (Petition to Condition Authorization of CTC).

³ *Bachow Communications, Inc. v. FCC*, No. 99-1346; *Bachow Communications, Inc. v. FCC & USA*, No. 99-1347; *DCT Transmission L.L.C. v. FCC & USA*, No. 99-1360; *Cambridge Partners, Inc., et. Al. v. FCC*, No. 99-1361; *Cambridge Partners, Inc., et. al. v. FCC & USA*, No. 99-1362; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC*, No. 99-1363; *Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation v. FCC & USA*, No. 99-1364; and *DCT Transmission L.L.C. v. FCC*, No. 99-1365 (D.C. Cir. filed 1999).

the 39 GHz proceeding were being appealed and that resolution of this appeal could have an impact on the availability of spectrum in the 39 GHz band.⁴ On May 8, 2000, the Commission's Auction No. 30 concluded.⁵ On May 10, 2000, the Wireless Telecommunications Bureau (Bureau) announced the winning bidders in Auction No. 30.⁶ All winning bidders were required to electronically file a complete long-form application, FCC Form 601, no later than 6:00 p.m. Eastern Standard Time on May 24, 2000.⁷ ART and CTC met this deadline. In the *Auction Closes Public Notice*, the Bureau stated that once the long-form applications appeared on a public notice as accepted for filing, interested parties would have ten days to file petitions to deny.⁸ The Bureau also stated that the Commission will be prepared to grant an application if it determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination.⁹ On September 15, 2000, the Bureau released a *Public Notice* that accepted for filing the above-captioned applications.¹⁰ On September 25, 2000, the subject petitions to condition authorization were filed, in which the petitioners state their concerns that should they prevail before the D.C. Circuit, their reinstated applications will conflict with certain authorizations that were requested in the above-captioned applications.¹¹

3. *Discussion.* As noted, the Commission will be prepared to grant an application if it determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination.¹² The petitioners, in this instance, do not allege any deficiencies in the applicants' qualifications. The petitioners do not in fact oppose or request denial of the above-captioned applications.¹³ Rather, they seek imposition of an express condition on the grant of the applications.¹⁴ Thus, the petitions would be most appropriately characterized as an informal request for Commission action.¹⁵ We find that the petitioners' requested action is unnecessary under the circumstances. In this regard, we note that Section 402(h) of the Communications Act, as amended, requires that in the event the D.C. Circuit should render a favorable decision involving the petitioners' applications, the Commission must carry out the

⁴ Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band, *Public Notice*, 15 FCC Rcd 850, 857 (2000).

⁵ 39 GHz Band Auction Closes, *Public Notice*, 15 FCC Rcd 13648, 13648 (WTB 2000) (*Auction Closes Public Notice*).

⁶ *See id.*

⁷ *Id.* at 13649.

⁸ *Id.* at 13648, 13654.

⁹ *Auction Closes Public Notice*, 15 FCC Rcd at 13648, 13654; *see* 47 C.F.R. § 1.2108(d).

¹⁰ Wireless Telecommunications Bureau Announces that Certain Applications for the Authority to Operate in the 39 GHz Band Are Accepted for Filing, *Public Notice*, DA 00-2108 (rel. Sept. 15, 2000).

¹¹ Petition to Condition Authorization of ART at 2; Petition to Condition Authorization of CTC at 2.

¹² *See Auction Closes Public Notice*, 15 FCC Rcd at 13648, 13654; *see also* 47 C.F.R. § 1.2108(d).

¹³ Petition to Condition Authorization of ART at 2; Petition to Condition Authorization of CTC at 2.

¹⁴ Petition to Condition Authorization of ART at 2; Petition to Condition Authorization of CTC at 2.

¹⁵ *See* 47 C.F.R. § 1.41.

judgement of the court.¹⁶ Thus, we conclude that no further action regarding the petitioners' claims is required or warranted in the instant matter.

4. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the petition to condition authorization of File No. 0000138811, filed by Broadband WirelessAccess Services, Stevan A. Birnbaum, Cambridge Partners, Inc., HiCap Networks, Inc., William R. Lonergan, PIW Development Corporation, Paul R. Likins, Cornelius T. Ryan, Southfield Communications LLC, SMC Associates, Video Communications Corporation, and Wireless Telco on September 25, 2000 IS DISMISSED.

5. IT IS FURTHER ORDERED pursuant to Sections 4(i), 309 and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 402(h), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the petition to condition authorization of File No. 0000132638 filed by Cambridge Partners, Inc., Linda Chester, PIW Development Corporation, Paul R. Likins, and Southfield Communications LLC on September 25, 2000, IS DISMISSED.

6. 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁶ See 47 U.S.C. § 402(h); Applications of Cambridge Partners, Inc., *Memorandum Opinion and Order*, FCC 00-322, ¶ 6 (rel. Sept. 15, 2000); Qualcomm Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, FCC 00-219, ¶ 11 (rel. June 8, 2000). Application of Pinelands, Inc. (Transferor) and BHC Communications, Inc. (Transferee) for Transfer of Control of WWOR-TV, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 6058, 6061 ¶ 13 (1992).