

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

In the Matter of
CHAMPION COMMUNICATION
SERVICES, INC.
Request for Waiver of Section 90.305
of the Commission's Rules
File No. A037650

ORDER ON RECONSIDERATION

Adopted: November 28, 2000

Released: November 29, 2000

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

I. INTRODUCTION

1. Champion Communication Services, Inc. (Champion) requests reconsideration of the denial of its request for a waiver of the Commission's Rules to relocate a 470-512 MHz band channel to a base station located more than fifty miles from the geographic center of the Washington, D.C. urbanized area.

2. The Commission licenses land mobile operations in the 470-512 MHz band on a geographically shared basis with Television Broadcast stations. To accommodate this sharing arrangement, Part 90 Subpart L of our Rules allocates specific frequencies for thirteen urban areas and includes technical specifications unique to land mobile operation in the 470-512 MHz band. One such specification is the "fifty-mile" rule. Section 90.305(a) of the Commission's Rules requires a licensee to locate the transmitter sites for its base stations no more than 80 kilometers (50 miles) from the "geographic center" of the urbanized area in which the land mobile system operates.

3. On May 3, 1999, the Commission received the above-captioned application from Champion, seeking authorization to relocate one channel of Station WPKX806 from Charlotte Hall, Maryland, to a base station located in Great Mills, Maryland. Because the Great Mills, Maryland site fell outside the

1 Letter from Mary Shultz, Federal Communications Commission, to Mr. David A. Terman, Champion Communication Services, Inc. (March 27, 2000).

2 See generally, Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Notice of Proposed Rule Making, Gen. Docket No. 85-172, 101 FCC 2d 852 (1985).

3 47 C.F.R. Part 90, Subpart L.

4 47 C.F.R. § 90.305(a). Section 90.303 of the Commission's Rules lists the coordinates for the "geographic center" of each urbanized area. 47 C.F.R. § 90.303.

5 See FCC File No. A037650 (filed May 3, 1999).

fifty-mile radius from the geographic center of the Washington, D.C. urbanized area, Champion subsequently filed a waiver request.⁶ By letter dated March 27, 2000, the Chief of the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, denied the waiver request.⁷ On April 14, 2000, Champion submitted a petition for reconsideration of the March 27, 2000, denial of its waiver request to the FCC's Gettysburg office.⁸

4. *Discussion.* Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁹ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.¹⁰ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹¹ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹² Accordingly, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania office is not properly filed.¹³

⁶ Waiver Request (filed May 14, 1999).

⁷ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Mr. David A. Terman (March 27, 2000).

⁸ Petition for Reconsideration (dated April 11, 2000, and received on April 14, 2000, at the FCC's Gettysburg location).

⁹ 47 C.F.R. § 1.106(i).

¹⁰ 47 C.F.R. § 0.401.

¹¹ *Id.*

¹² 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

¹³ *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon Bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd.*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

5. The Petition was never filed with the Office of the Secretary. Therefore, we find that the Petition was not timely filed in the proper location. Moreover, Champion did not file a request for waiver to submit its Petition to Gettysburg or to file the Petition outside of the thirty-day filing period for filing petitions for reconsideration with the Office of the Secretary. Consequently, absent a waiver, we conclude that Champion's Petition should be dismissed as improperly filed.¹⁴

6. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106(f) and (i) of the Commission's Rules, 47 C.F.R. §§ 1.106 (f) and (i), that the request by Champion Communication Services, Inc. for reconsideration of the denial of its waiver request relating to File Number A037650, received on April 14, 2000, at an improper location, IS DISMISSED.

7. 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

John J. Schauble
Chief, Policy and Rules Branch
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ If we reached the merits of Champion's Petition, we would affirm the ruling of the Chief, Licensing and Technical Analysis Branch. A request for a rule waiver may be granted if it is shown that (a) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. Champion failed to make an adequate showing under either prong of the waiver standard. Champion did not demonstrate how the underlying purpose of the rule would be frustrated by applying the rule in this case. Champion requested a waiver of the "fifty-mile" rule, discussed *supra*, because its equipment was not compatible with alternative frequencies. Those factual circumstances are not unique or unduly burdensome. We are not convinced that Champion was unable to use other frequencies outside the 470-512 MHz band. Therefore, the March 27, 2000, denial of Champion's request was proper and in the public interest.