

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

In the Matter of)	
)	
CAPITAL SQUARE REVIEW AND)	FCC File No. 0000085717
ADVISORY BOARD)	FCC File No. 0000085725
)	FCC File No. 0000085727
Petition for reconsideration of dismissal of)	FCC File No. 0000085729
captioned applications and their reinstatement in)	
the application processing line)	

ORDER ON RECONSIDERATION

Adopted: January 16, 2001

Released: January 18, 2001

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

1. *Introduction.* On May 10, 2000, application FCC File No. 0000085717, filed by Capital Square Review and Advisory Board (Capital Square) was returned to the applicant for amendment.¹ On July 14, 2000, Capital Square was advised that all four of the above-captioned applications were dismissed for failure to file the required amendments within the time specified.² On July 26, 2000, Capital Square filed, with the Office of the Secretary, FCC, a timely Petition for Reconsideration and Reinstatement (Petition).³ In its Petition, Capital Square requested that the dismissed applications be reinstated to their place in the application processing line.⁴ For the reasons given herein, the Petition is granted.

2. *Background.* Capital Square is the governing body of the historic Ohio Statehouse.⁵ Capital Square filed four applications on February 14, 2000, to implement a private operational fixed microwave system connecting the Statehouse in Columbus, Ohio, with various other locations in order to provide data communications support to its employees and other authorized users.⁶ On May 10, 2000, the Commission's staff returned Capital Square's application, FCC File No. 0000085717, so that Capital Square could respond to an allegation that its proposed station would cause interference.⁷ The Return

¹ Notice of Application Return Letter from FCC, Wireless Telecommunications Bureau, Gettysburg, Pa., to Dennis Trimble, Capital Square Review and Advisory Board, dated May 10, 2000 (Return Letter).

² Notice of Immediate Application Dismissal Letter from FCC, Wireless Telecommunications Bureau, Gettysburg, Pa., to Dennis Trimble, Capital Square Review and Advisory Board, dated July 14, 2000 (Dismissal Letter).

³ Petition for Reconsideration and Reinstatement, filed July 26, 2000 (Petition).

⁴ Petition at 1.

⁵ *Id.*

⁶ *Id.*

⁷ Return Letter at 1.

Letter stated, "If you have not filed an Amendment within 60 days of the date at the top of this letter, your application will be Dismissed."⁸ Capital Square states that it filed the requested amendments on July 10, 2000, at the Office of the Secretary in Washington, DC.⁹ It then sent, *via* Federal Express, courtesy copies of the amendments to our Gettysburg licensing facility.¹⁰ Those courtesy copies of the amendments were received in Gettysburg on Tuesday, July 11, 2000.¹¹

3. *Discussion.* Capital Square contends that the applications were amended and were timely resubmitted within the 60-day time frame.¹² Further, Capital Square alleges that the Commission has apparently miscalculated the due date for the amendments.¹³ Capital Square states that since the Return Letter was dated May 10, 2000, the first day to be counted in computing the 60-day period should be May 11, 2000.¹⁴ In addition, Capital Square notes that the 60th day was a Sunday, July 9, 2000, and that, in such a case, the filing date would be advanced to the next business day, Monday, July 10, 2000.¹⁵ Further, Capital Square relies on Section 1.4(f) of the Commission's Rules which provides, among other things, that documents that are not required to be accompanied by a fee and which are hand-delivered must be filed with the Office of the Secretary in Washington, D.C.¹⁶

4. Capital Square is correct that the due date of the amendments was July 10, 2000. It is not correct, however, when it claims that it properly filed the amendments with the Office of the Secretary. When an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules for the various types of submissions made to the Commission.¹⁷ In this case, the controlling filing requirements are not in Section 1.4, but are contained in Section 1.913 of the Commission's Rules.¹⁸ Section 1.913(a)(1) provides that FCC Form 601, Application for Authorization in the Wireless Radio Services, is to be used for amendments to pending applications.¹⁹ Further, Section 1.913(d)(4) requires that manually-filed applications that do not require fees must be addressed and sent to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg,

⁸ *Id.*

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ *See, e.g.*, Attachment D to the Petition showing the Gettysburg receipt stamp, July 11, 2000.

¹² Petition at 2.

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.4(b)(5).

¹⁵ 47 C.F.R. § 1.4(e) and (j).

¹⁶ 47 C.F.R. § 1.4(f).

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 1.913.

¹⁹ 47 C.F.R. § 1.913(a)(1).

Pennsylvania.²⁰ The amendments in question did not involve the payment of a fee because Capital Square is a governmental entity.²¹ Section 1.913(a)(1) and Section 1.913(d)(4) must be read together. The “manually-filed application” referred to in Section 1.913(d)(4) includes an amendment to a pending application. Thus, when Capital Square filed its amendments with the Secretary of the Commission in Washington, D. C., on July 10, 2000, it did not file them at the proper location.

5. Nonetheless, in this particular case, we conclude that dismissal of Capital Square’s applications would be unduly harsh. We reach that conclusion because several factors could reasonably have caused Capital Square to be uncertain as to where to file the amendments. Our rules do not explicitly state where amendments to applications must be filed.²² Moreover, the Return Letter did not explicitly provide the exact location where Capital Square was to file its amendment. It merely said that the amendment was to be filed on FCC Form 601. Our rules provide that FCC Form 601 must be filed at the Gettysburg licensing facility, if no fee is required. Finally, our research has not found a case where the Commission dismissed an application under Section 1.913 solely because the applicant filed an amendment in the wrong location. The United States Court of Appeals for the District of Columbia has stated, “[w]hen the sanction is as drastic as dismissal without any consideration whatever of the merits, elementary fairness compels clarity in the notice of the material required as a condition for consideration.”²³ Therefore, in this particular instance only, we will reinstate Capital Square’s applications.

6. Notwithstanding our decision in this case, we wish to reiterate that manually-filed amendments to applications that do not require fees must be addressed and sent to the Commission’s Gettysburg facility. In the future, we expect applicants to strictly comply with that requirement, and we reserve the right to dismiss applications when amendments are filed at an incorrect location.

7. Accordingly, IT IS ORDERED, that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Capital Square Review and Advisory Board on July 26, 2000, IS GRANTED.

8. IT IS FURTHER ORDERED that the Licensing and Technical Analysis Branch SHALL REVIEW Capital Square’s applications, including the subject amendments, to determine what further information is needed, if any, before further processing of the applications takes place.

9. This action is taken under the delegated authority contained in Sections 0.131 and 0.331 of the

²⁰ 47 C.F.R. § 1.913(d)(4).

²¹ 47 C.F.R. § 1.1114(f).

²² See 47 C.F.R. § 1.913(d)(4).

²³ *Salzer v. FCC*, 778 F.2d 869, 874 (D.C. Cir. 1985).

Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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