

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

In the Matter of)
MEGASTAR, INC.)
Request for Waiver of Section 1.913 of the)
Commission's Rules for Stations WHQ690 and)
WHQ706, Dallas, Texas) File Nos. 0000416439 and 0000416441

ORDER

Adopted: October 1, 2001

Released: October 3, 2001

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

1. Introduction. We have before us two requests by Megastar, Inc. (Megastar) to waive Section 1.913(b) of the Commission's Rules, 47 C.F.R. § 1.913(b), to permit manual filing of its renewal applications for Stations WHQ690 and WHQ706, Dallas, Texas. For the reasons set forth below, we deny the requests and dismiss the applications.

2. Background. On February 5, 2001, Megastar, Inc. (Megastar) manually filed FCC Form 601 to renew and modify its licenses for point-to-point common carrier Fixed Microwave Services Stations WHQ690¹ and WHQ706,² both of which expired on February 1, 2001. Subsequently, on March 22, 2001, Megastar submitted waiver requests stating, in their entirety,

Megastar, Inc. recently submitted a form 601 Application for Renewal for point to point microwave radio call signs WHQ690 and WHQ706. Since these are common carrier licenses, the Rules require that such applications be filed electronically. Unfortunately this application was filed on paper.

Megastar, Inc. hereby requests a waiver to the Rules allowing this Application for Renewal to be accepted for processing regardless of the fact it was filed using the incorrect medium.³

3. Discussion. Although not stated specifically in its requests, Megastar seeks a waiver of Section 1.913(b) of the Commission's Rules, which requires that, with certain limited exceptions, applications must be filed electronically via the Universal Licensing System.⁴ We note, as an initial matter,

¹ Megastar, Inc. FCC Form 601, File No. 0000416439 (filed Feb. 5, 2001).

² Megastar, Inc. FCC Form 601, File No. 0000416441 (filed Feb. 5, 2001).

³ Letter from Nigel Macrae, President, Megastar Inc. to Ruth Taylor, Federal Communications Commission (dated Mar. 16, 2001).

⁴ 47 C.F.R. § 1.913(b).

that electronic filing for common carrier point-to-point Fixed Microwave Services applications has been required since March 1, 2000.⁵

4. The Commission may grant a request for a waiver if it is shown that: (i) the underlying purpose of the rule(s) 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 (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶ In this particular instance, Megastar made no effort to explain why it needed a waiver or how it met the standard for a waiver; rather, it merely requested a waiver to allow it to file manually. We note that “[a]n applicant for a waiver faces a high hurdle even at the starting gate. ‘When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such an action.’”⁷ Megastar has not done so here, and therefore, we have no basis on which to grant its waiver requests.⁸ Consequently, we deny the requests and dismiss the applications as improperly filed.

5. If Megastar wishes to obtain valid authorizations for these stations, it must file new properly coordinated applications.⁹ If Megastar wishes to continue operating these facilities until it receives new authorizations, it must obtain authorization to do so.¹⁰

6. 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 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, the request for a waiver of Section 1.913(b) of the Commission’s Rules, 47 C.F.R. 1.913(b) filed by Megastar, Inc. on February 5, 2001, IS DENIED, and applications FCC File Nos. 0000416439 and 0000416441, filed February 5, 2001, ARE DISMISSED.

⁵ Electronic Filing Required for Certain Microwave Licenses Beginning March 1, 2000, *Public Notice*, 15 FCC Rcd 15651 (WTB 2000).

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (1968)), *cert. denied*, 409 U.S. 1027 (1972).

⁸ *See* North Eastern Massachusetts Law Enforcement Council Request, *Order*, 16 FCC Rcd 12474 (WTB PSPWD 2000).

⁹ *See* 47 C.F.R. § 101.103.

¹⁰ *See* 47 C.F.R. § 1.931.

7. This action is taken under delegated authority pursuant to 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
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