

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

In the Matter of Application of)	
)	
JUDITH K. VEGA)	
)	File No. BPMD-9250444
For Authority to Construct New Multichannel)	Facility ID No. 300592
Multipoint Distribution Service Station On the)	
F-Group Channels, West Palm Beach, Florida)	
)	

ORDER ON RECONSIDERATION

Adopted: April 22, 2003

Released: April 24, 2003

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

1. *Introduction.* In this *Order on Reconsideration (Order)*, we address a Petition for Reconsideration filed on March 1, 1993 by Judith K. Vega (Vega),¹ seeking reconsideration of a February 2, 1993 action by the Domestic Facilities Division of the former Common Carrier Bureau² in the above referenced file.³ The February 2, 1993 action returned as unacceptable for filing Vega's application for authority to construct a new Multichannel Multipoint Distribution Service (MMDS) station at West Palm Beach, Florida. For the reasons stated below, we deny the Petition.

2. *Background.* Vega filed the above referenced application on October 9, 1991. The Commission makes provision for actual notice and an opportunity to be heard by parties in interest to such applications by requiring at Section 21.902(g) of its Rules⁴ that those who might be affected by the operation of a station, *i.e.*, all applicants, conditional licensees and licensees for stations stipulated to be studied by Section 21.902(c) of its Rules,⁵ be served a copy of the required interference analysis for the station.⁶ Contained in the Vega application was a certificate of service indicating that interference analysis had not been served upon MMDS Fort Pierce, Inc., a party in interest,⁷ along with the following accompanying statement:

¹ Petition for Reconsideration (filed Mar. 1, 1993)(Petition).

² Application Return Notification, dated Feb. 2, 1993, sent from Consuela Kearny, Industry Analyst, Domestic Facilities Div., Common Carrier Bureau, Federal Communications Commission, to Judith K. Vega. (Return Letter).

³ This file number was originally 50444-CM-P-92 and later reformatted for entry into the Broadband Licensing System.

⁴ 47 C.F.R. § 902(g).

⁵ 47 C.F.R. § 902(c).

⁶ Five Applications for Authority to Construct and Operate Multipoint Distribution Service Stations on the F-group Channels at Henryetta, Oklahoma, *Order on Reconsideration*, 13 FCC Rcd 11026, 11037 ¶ 22 (1998) (*Five Applications*).

⁷ Application, Certificate of Service.

The Applicant was not able to obtain proper mailing address at the time of filing. Applicant will forward a copy of this study when address is available. Thus, waiver of Section 21.902(g) of the Commission's Rules is requested.⁸

3. On February 2, 1993, the staff returned Vega's application as unacceptable for filing⁹ for failure to serve all affected parties, pursuant to Section 21.902(g) of the Commission's Rules.¹⁰ On March 1, 1993, Vega filed the instant Petition.¹¹ On November 9, 1994, in response to Vega's Petition, WJB Ft. Pierce Limited Partnership (WJB-TV) filed an opposition to the Petition.¹²

4. *Discussion.* As an initial matter, we decline to consider WJB-TV's opposition to Vega's Petition. Any opposition to a petition for reconsideration must be filed with the Commission within ten days after the petition is filed.¹³ WJB-TV filed its opposition over twenty months after the Petition was filed, and WJB-TV did not seek leave to file its opposition late. Accordingly, we will strike WJB-TV's opposition on our own motion.

5. In the Petition, Vega claims that her request for waiver of Section 21.902(g) should have been granted because "there was no available means by which the applicant could obtain the address of the previously proposed applications. . . ." ¹⁴ We disagree. Pursuant to Section 21.19 of the Commission's Rules,¹⁵ an applicant seeking a waiver must make an affirmative showing that: (a) the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (b) the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.¹⁶ Vega's "waiver request" contained no affirmative showing that addressed either prong of the waiver standard.

6. With respect to the first prong, we conclude that the required affirmative showing has not been met. Under Section 21.902(g) of the Commission's Rules, an applicant is required to provide affected parties actual notice and an opportunity to be heard with respect to facilities that may cause interference.¹⁷ Because Vega did not serve its interference analysis as required, all potentially affected parties did not have opportunity to analyze and respond in a timely manner as to the potential impact of Vega's proposed facilities. If the Commission had accepted the application filing and granted the waiver

⁸ *Id.*

⁹ 47 C.F.R. § 21.20(a) sets forth the standards for returning MDS applications as unacceptable for filing:

Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions of discrepancies if: (1) The applicant is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or (2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

¹⁰ There was no Commission public notice of this action.

¹¹ Petition.

¹² Opposition to the Petition (filed Nov. 9, 1994).

¹³ 47 C.F.R. § 1.106(g).

¹⁴ Petition at 2.

¹⁵ 47 C.F.R. § 21.19.

¹⁶ *Id.*

¹⁷ See Hinton Telephone Company, *et al.*, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11634-35 (1995), quoting Edna Cornaggia, *Memorandum Opinion and Order*, 8 FCC Rcd at 5444.

request, the orderly process contemplated by the Commission, by which the Commission staff readily identifies, addresses and resolves interference issues in a timely manner after oppositions are filed, would have been negated.¹⁸ As timely service of interference studies to all affected parties provides the Commission staff with technical information useful in evaluating applications,¹⁹ a waiver of the Section 201.902(g) notice requirement under the circumstances presented would not have been in the public interest.

7. With respect to the second prong of the waiver requirement, we conclude that Vega also has not satisfied this standard. Applying the notice requirement in the instant case we do not believe, as Vega otherwise contends, that “there was no available means by which the applicant could obtain the address of the previously proposed applications”²⁰ Indeed, Vega could have readily obtained the address of MMDS Fort Pierce, Inc. by a simple search of the Commission’s public records. A review of these records shows that at the time Vega filed her application, MMDS Fort Pierce, Inc. had on file in the Commission’s public records various documents indicating its address, which Vega could have readily obtained.²¹ Therefore, we believe that application of Section 201(g) in this instance is equitable. Because we find that there is an insufficient basis for granting a waiver of Section 21.902(g) of the Commission’s Rules under the circumstances presented, we deny Vega’s Petition.

8. *Conclusion.* In view of all of the foregoing considerations, we affirm the Domestic Facility Division staff’s return of the Vega application, which is the subject of this *Order*. Neither reconsideration of the decision nor reinstatement of the application is warranted under the circumstances presented.

9. 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 Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Judith K. Vega on March 1, 1993 IS HEREBY DENIED.

10. 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

¹⁸ *Id.*, see also *Five Applications*, 13 FCC Rcd at 111040 ¶ 27.

¹⁹ *Id.*

²⁰ Petition at 2.

²¹ Vega argues that addresses cannot be obtained from “newly submitted applications to which the FCC prohibits any party from reviewing and obtaining information about until the specific application is placed on Public Notice.” *Id.* a 2. This argument is not persuasive since even if that were the case, Vega still could have obtained MMDS Fort Pierce, Inc.’s address from either then non-recent or non-application-related filings. See, e.g., Consent to Transfer Control, File No. 52856-CM-TC-90, Aug. 6, 1990; MMDS Fort Pierce, Inc.’s Licensee Qualification Report (FCC Form 430), July 13, 1990.