

FEDERAL COMMUNICATIONS COMMISSION

445 12th Street, SW
Washington, DC 20554

DA No. 07-434

January 31, 2007

Donald J. Evans, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th Street
Arlington, VA 22209

Re: File No. 0001332167, Call Sign WPWR222

Dear Mr. Evans:

For the reasons stated below, the Mobility Division hereby dismisses, as procedurally defective, the petition of Lawrence V. Behr (Behr) for a hearing, pursuant to Section 1.110 of the Commission's rules.¹ In his Section 1.110 Petition,² Behr requests that we vacate the grant of the above-referenced application to modify his Phase I 220 MHz license and set for hearing the denial of Behr's Petition for Waiver—filed with the application—of Section 90.725(f),³ which requires construction of Behr's Phase I 220 MHz license, Call Sign WPWR222, in 12 months.⁴

Section 1.110, by its terms only applies when “the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested” by the applicant.⁵ The Wireless Telecommunications Bureau granted Behr's application in full; as such, Behr is effectively seeking a hearing regarding the denial of his Petition for Waiver. We find that Behr is not entitled to a Section 1.110 hearing. As the Commission stated in an analogous context:

This amounts to a contention that a licensee, by requesting waiver of any Commission rule in his [] application, can obtain an evidentiary hearing [under Section 1.110] on whether it should apply to him. Such an argument is clearly without substance.⁶

¹ 47 C.F.R. § 1.110.

² Letter dated December 17, 2003, from Donald J. Evans, counsel to Laurence V. Behr, to Marlene H. Dortch, Secretary, FCC (Section 1.110 Petition).

³ 47 C.F.R. § 90.725(f).

⁴ See Letter dated November 12, 2003, from Ronald B. Fuhrman, Deputy Chief, Technical Analysis Section, Commercial Wireless Division, to Donald J. Evans, counsel to Laurence V. Behr (denying waiver request).

⁵ Section 1.110 provides further that “the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing”

⁶ See Requests for Exemption From or Waiver of the Provisions of Section 73.242 of the Commission's Rules, *Memorandum Opinion and Order*, 8 FCC2d 1, 4 (1967), *aff'd*, *Buckley-Jaeger v. FCC*, 397 F.2d 651 (D.C. Cir. 1968).

If Behr's interpretation of Section 1.110 were correct, then the denial of any request for relief, provided such request happened to be attached to an application, would entitle the requestor to an evidentiary hearing under Section 1.110.⁷ The public interest would be ill served if the Commission were required to devote its limited resources to conducting Section 1.110 hearings *ad nauseum*. The Commission's rules, moreover, provide two well-established vehicles for challenging the denial of relief on delegated authority—petitions for reconsideration and applications for review.⁸ We note that Behr did not seek relief via either vehicle by the applicable filing deadline of December 12, 2003 (30 days from the denial of his Petition for Wavier).

We also note that because Behr failed to construct WPWR222 by the applicable 12-month deadline, the license cancelled automatically on January 8, 2004 pursuant to Section 90.725(f).⁹

Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Section 1.110 request filed by Lawrence V. Behr on December 17, 2003, IS DISMISSED.

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.

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Lloyd W. Coward
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁷See *Buckley-Jaeger v. FCC*, 397 F.2d at 656 (“It is also clear that section 1.110 of the Commission's rules has no application here. The rule concerns situations where the applicant receives less than a full authorization. But here Appellant received the full authorization to which it was entitled under the statute and rules. In these circumstances we do not believe the rule can reasonably be interpreted as making a hearing mandatory.”).

⁸ See 47 C.F.R. §§ 1.106, 1.115.

⁹ 47 C.F.R. § 90.725(f) (“systems not constructed and placed in operation, or having commenced service, within twelve months from the date of initial license grant cancel automatically”).