

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

In the Matter of the Application of
Champion Industries, Inc.
For Authority to Construct and Operate a New
Multipoint Distribution Service Station on the
F-Group Channels at Springfield, MO
File No. 50123-CM-P-92

MEMORANDUM OPINION AND ORDER

Adopted: August 7, 2001

Released: August 21, 2001

By the Commission:

1. The Commission has before it an Application for Review filed by Champion Industries, Inc. (Champion), seeking review of a Video Services Division order on reconsideration, adopted on September 3, 1999, and released on September 7, 1999 (Division Order). The Division Order denied a petition for reconsideration of the dismissal, pursuant to delegated authority, of an application to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F group channels at Springfield, Missouri.

2. Champion filed the above-referenced application for a new MMDS station at Springfield on October 7, 1991, and the Commission staff determined that the application was unacceptable for filing. The application was dismissed by letter dated March 27, 1995, which stated, inter alia, that the applicant failed to include interference analyses for all previously proposed or authorized MMDS stations, as required by Section 21.902(c) of the Commission's rules, 47 C.F.R. § 21.902(c); failed to comply with the technical requirements of Section 21.902(b), 47 C.F.R. §21.902(b); and failed to serve all affected parties pursuant to Section 21.902(g), 47 C.F.R. §21.902(g).

1 Section 21.20(a) of the rules, 47 C.F.R. §21.20(a), sets forth the standards for acceptability of MDS applications 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 or discrepancies if:

- (1) The application 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.

3. On reconsideration, the Video Services Division affirmed the dismissal of Champion's application for failure to comply with Section 21.902 of the Commission's rules, 47 C.F.R. §21.902 (1991). The Division stated that interference analyses are necessary at the time of application filing due to the extensive planning and engineering involved in the MDS licensing process. *Division Order* at 2. The Division found that Champion failed to file twenty-five of the interference analyses required by the rules. In addition, the Division's independent engineering study revealed that Champion failed to design its proposed station to provide at least 0 dB of adjacent channel interference protection for these twenty-five previously proposed adjacent channel stations. *Division Order* at 3. Citing *McDougald Broadcasting Corporation*, 12 FCC Rcd 10034, 10035-10036 (1997), the Division stated that the fact that Champion first filed an application in 1983 for which interference studies were waived pursuant to the *MMDS Allocation Order*, 94 FCC 2d 1203, 1265 (1983), was not relevant because Champion submitted its 1983 application for cancellation on September 26, 1991, and thus forfeited the 1983 waiver. *Division Order* at 4. Finally, the Division stated that service upon affected parties, as defined by the Commission's rules, is provided for in the rules so that parties in interest may have actual notice of a proposed station and sufficient time to respond if desired. *Division Order* at 5.

4. Champion observes that it was the original 1983 conditional licensee of the Springfield, Missouri F Group channels. Champion maintains that when it met with Commission staff to discuss the prospect of extending Champion's construction deadline, Champion was advised to forego making such a request, but instead to tender its authorization for cancellation and to file a new application. Champion argues that earlier Commission public notices and then-extant policies led Champion to believe that resubmitting its original application as a new application was an acceptable procedure to follow, and states that other applications for original MMDS allocations that did not create unlawful interference have been accepted for filing and granted. Champion notes that in resubmitting its 1983 application in 1991, Champion pledged to protect any applicant that might be chosen in the future. Champion contends that it is being held to a higher standard than other applicants, and argues that the *Division Order* should be reversed, Champion's application reinstated, and processed to grant.

5. As we have previously held, "an applicant filing for a . . . cancelled 1983 transmitter site must be required to show that their proposed transmitter site would not cause harmful interference to other previously authorized or proposed stations and otherwise meet the requirements for waiver." *Hinton Telephone Company*, 10 FCC Rcd 11625, 11638 (1995)(citation omitted), *aff'd sub nom. Knollwood, Ltd. v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996). Although at the time Champion filed its original application in 1983 Champion was entitled to a waiver of the interference analysis requirement pursuant to the *MMDS Allocation Order*, *supra*, Champion forfeited its waiver privilege once Champion submitted its application for cancellation. *McDougald Broadcasting Corporation*, *supra*, is precisely on point. In *McDougald*, as here, the petitioner had filed an application for an MMDS station in 1983, and, having failed to construct, submitted its license for cancellation in 1991. The petitioner then, as here, filed a new application for authority to construct an MMDS station, for the exact facilities as the canceled station, without providing required interference analyses. This subsequent application was returned as unacceptable for filing for failure to provide the interference studies required at the time of filing in 1991. Filing appropriate interference analyses that demonstrate lack of harmful interference is a basic requirement in determining the acceptability of an application. *McDougald Broadcasting Corporation*, 12 FCC Rcd at 10036. Champion was required to comply with all the requirements at the time its application was filed in 1991, including the submission of appropriate interference studies. *Id.* at 10037. Pledges of future conduct are not sufficient substitutes for required studies. In addition to failing to file the appropriate interference studies, Champion failed to serve copies of the required studies on any of the required applicants, conditional licensees, and licensees for stations stipulated to be studied by the rules. Champion fails to

address this issue in its application for review. This failure to provide service deprived affected parties of notice and opportunity to be heard, and is itself grounds for Champion's application's dismissal as unacceptable for filing. *Edna Cornaggia*, 8 FCC Rcd 5442 (1993).

6. In view of the foregoing, we find that grant of Champion's application for review is not in the public interest. We affirm the staff's return of Champion's application under consideration in this order. Reinstatement of the application is not warranted.

7. Accordingly, IT IS ORDERED, That the application for review filed October 7, 1999 by Champion Industries, Inc. IS DENIED.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send a copy of this decision to the authorized representative for the applicant by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary