

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

In the Matter of Application of)	
)	
AMERICOM NETWORK, INC.)	FCC File No. 00003330810
)	
For Transfer of Control of Licensee of 218-219)	
MHz Service Station KIVD0002, Frequency)	
Segment B, New York, New York Metropolitan)	
Statistical Area (MSA))	

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 2001

Released: October 15, 2001

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

I. INTRODUCTION

1. On January 4, 2001, Christina del Valle (del Valle) and Spectrum IVDS, L.L.C. (“Spectrum”) filed the above-captioned application seeking to transfer control of Americom Network, Inc. (“Americom”), licensee of 218-219 MHz Service Station KIVD0002, Frequency Block B, New York, New York Metropolitan Statistical Area (MSA) from del Valle to Spectrum.¹ For the reasons discussed below, we dismiss petitions to deny filed by Interactive Capital Group, Inc. (ICG) and Interactive Management Services, L.L.C. d/b/a In-Sync Interactive Management Company (In-Sync)² for failure to comply with the procedural requirements concerning petitions to deny. Accordingly, we forward the Americom Application to the Licensing and Technical Analysis Branch (“Branch”), Public Safety and Private Wireless Division for processing in accordance with this *Memorandum Opinion and Order* pending resolution of a petition for reconsideration concerning this license.³

¹ See FCC File No. 00003330810 (filed Jan. 4, 2001) (“Americom Application”).

² See Interactive Capital Group, Inc., Petition to Deny (filed Feb. 15, 2001) (ICG Petition); In-Sync Interactive Management Company, Petition to Dismiss or Deny Transfer of Control Application Regarding American Network, Inc. (filed Feb. 26, 2001) (“In-Sync Petition I”); In-Sync Interactive Management Company, Petition to Dismiss or Deny Transfer of Control Application Regarding American Network, Inc. (filed May, 9, 2001) (“In-Sync Petition II”). References to the documents in this *Order* as the “In-Sync Petitions” refer to both petitions. Americom and Spectrum filed timely oppositions to the petitions to deny. See Americom Network, Inc., Opposition to Petition to Deny (filed Feb. 28, 2001) (“Americom Opposition I”); Spectrum IVDS, L.L.C., Opposition to Petition to Deny (filed Feb. 28, 2001) (“Spectrum Opposition I”); Americom Network, Inc., Opposition to Petition to Deny (filed March 8, 2001) (“Americom Opposition II”); Spectrum IVDS, Inc., Opposition to Petition to Deny (filed March 8, 2001) (“Spectrum Opposition II”); Spectrum IVDS, Inc., Opposition to Petition to Deny, (filed May 17, 2001) (“Spectrum Opposition III”).

³ See Jan M. Reed and Edward M. Johnson, Petition for Reconsideration, In the Matter of Christina del Valle, New York, N.Y., Frequency Block B; Alberto E. Garza, Los Angeles, CA, Frequency Block B; Ignacio Santos de Hoyos, Boston, MA, Frequency Block A; Luz Lobaton, Houston, Texas, Frequency Block A, Applications for Licenses to Build and Operate IVDS Systems (filed Apr. 5, 1996).

II. BACKGROUND

2. Del Valle owns a seventy-two percent majority interest in Americom.⁴ On January 4, 2001, she filed the instant application seeking the Commission's consent to transfer her controlling interest in Americom to Spectrum. Americom asserts that "Spectrum is an entity that holds other 218-219 MHz licenses and has been working towards development of service in the 218-219 MHz band."⁵ Spectrum would acquire control of Americom via the purchase of del Valle's stock.⁶ The Americom Application was placed on public notice on January 24, 2001.⁷

3. ICG filed its petition to deny the Americom Application on February 15, 2001. In-Sync filed petitions to deny the Americom Application on February 26 and May 9, 2001. ICG and In-Sync maintain that they have private contractual disagreements with del Valle concerning ownership of Americom.⁸ Accordingly, ICG requests that we defer action on the Americom Application,⁹ while In-Sync requests that we deny or dismiss the Americom Application.¹⁰ Spectrum alleges that the ICG Petition should be dismissed because ICG did not serve its petition on Spectrum.¹¹ Spectrum contends that we should summarily dismiss the In-Sync Petitions because they were untimely filed and because In-Sync lacks standing to file a petition to deny in this proceeding.¹²

III. DISCUSSION

4. Based on our review and analysis of the record in this proceeding, we agree with Spectrum that the petitions to deny are procedurally defective. Section 1.939 of the Commission's Rules¹³ sets forth the requirements for petitions to deny. Section 1.939(a)(2) of the Commission's Rules states that for non-auctionable applications, petitions to deny must be filed within thirty days after the date of the public notice

⁴ See Americom Application, Exhibit 1 (Public Interest Statement).

⁵ *Id.*

⁶ *Id.*

⁷ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing, *Public Notice*, Report No. 761 (rel. Jan. 24, 2001) (*Public Notice*).

⁸ See ICG Petition at 1; In-Sync Petitions at 1.

⁹ See ICG Petition at 2-3.

¹⁰ See In-Sync Petitions at 1-2.

¹¹ See Spectrum Opposition I at 3.

¹² See Spectrum Opposition II at 3-4, Spectrum Opposition III at 3. Spectrum does not raise the standing issue in response to the Second In-Sync Petition. Rather, Spectrum denounces the subsequent submission because it was untimely "filed months beyond the prescribed 30-day period," Spectrum Opposition III at 1, and "clearly constitutes the filing of a frivolous pleading and an abuse of the Commission's process." *Id.* at 3. As such, Spectrum requests that we promptly and summarily dismiss it.

¹³ 47 C.F.R. § 1.939.

accepting the application for filing.¹⁴ In this case, the public notice accepting the Americom Application for filing was dated January 24, 2001.¹⁵ Thus, pursuant to Section 1.939(a)(2) of the Commission's Rules, the deadline for filing petitions to deny was February 23, 2001.¹⁶ The In-Sync Petitions were filed on February 26, 2001 and May 9, 2001, respectively. Moreover, In-Sync did not request a waiver or extension of the deadline for filing a petition to deny. We therefore find the In-Sync Petitions to be untimely and subject to dismissal as procedurally defective.

5. The ICG Petition, on the other hand, was timely because it was filed on February 15, 2001. However, ICG failed to serve its Petition on Spectrum or its counsel.¹⁷ Section 1.939(c) of the Commission's Rules requires a petitioner to deny to serve the petition "on the applicant and on all other interested parties pursuant to § 1.47."¹⁸ As the proposed transferee, Spectrum was entitled to service as a party to the application.¹⁹ Accordingly, we dismiss the ICG Petition as defective for failure to comply with the service requirement set-forth in Section 1.939 of the Commission's Rules.²⁰

IV. CONCLUSION AND ORDERING CLAUSES

6. We dismiss the petitions to deny filed against the Americom Application for failure to comply with the procedural requirements pertaining to petitions to deny. Consequently, we decline to address the merits of the petitions. As a result, we forward the Americom Application to the Branch for processing in accordance with this *Order* and the applicable Commission Rules. We note, however, that the Branch may not take action on the Americom Application until the outstanding reconsideration petition concerning the subject license filed by Jan M. Reed and Edward M. Johnson has been resolved.

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petition to Deny filed by Interactive Capital Group, Inc. on February 15, 2001 IS DISMISSED.

8. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petitions to Dismiss or Deny Transfer of Control Application Regarding Americom Network, Inc. filed by In-Sync Interactive Management Company on February 26, 2001 and May 9, 2001 ARE DISMISSED.

¹⁴ 47 C.F.R. § 1.939(a)(2); *see also, e.g.*, Sagir, Inc. and N.E. Colorado Cellular, Inc., *Memorandum Opinion and Order*, FCC 01-115, 2001 WL 314846 (FCC 2001); Bala Equity IV and Winstar Wireless Fiber Corp, *Order*, 15 FCC Rcd 18294 (WTB PSPWD 2000).

¹⁵ *See Public Notice.*

¹⁶ The computation of time for filing the petition to deny is calculated in accordance with 47 C.F.R. § 1.4.

¹⁷ *See ICG Petition, Certificate of Service.*

¹⁸ 47 C.F.R. § 1.939(c).

¹⁹ *Cf.* 47 C.F.R. § 1.1202(d)(1)(defining parties in the context of *ex parte* filings).

²⁰ *See* 47 C.F.R. § 1.939(g); *see also, e.g.*, Central Illinois Broadcasting Company, *Memorandum Opinion and Order and Notice of Forfeiture*, 10 FCC Rcd 1617 (1995); Albert L. Crain *et al.*, *Memorandum Opinion and Order*, 28 FCC 2d 381 (1971).

9. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948, the above-captioned transfer of control application filed by Christina del Valle and Spectrum IVDS, L.L.C. (FCC File No. 00003330810) shall be processed in accordance with this *Memorandum Opinion and Order*.

10. These actions are 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