

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

In the Matter of)
)
 THOMAS K. KURIAN)
 RF DATA INC.)
 SPECTRUM WIRELESS, INC.)
 PRAGNESH DESAI)
 JOSE N. FRANCIS)
 K. KURIAN)
 PAPPAMMAL KURIAN)
 THOMAS K KURIAN DBA TOMS)
 TRANSPORTATION COMPANY)
 SAMUEL MOSES, PR)
 RICHARD S.R. KUMAR)
 RICHARD RAVI KUMAR)
 RICHARD S RAVI KUMAR)
 RICHARD R. KUMAR)
 P. KURIAN)
 K. PAPPAMAL)
 KURIAN PAPPAMAL)
 RAJESH PATEL)
 DAISY PULINAT)
 SATHEESHMOORTHY PUNNIAMURTHY)
 JOSY THOMAS)
 RANCHITH VIJAYAN)

ORDER

Adopted: October 21, 2003

Released: October 22, 2003

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

I. INTRODUCTION

1. The “Coalition for Accuracy in Licensing” (Petitioners), a group of unnamed petitioners, requests that the Commission initiate license revocation proceedings against the Part 90 licenses held by the above-captioned individuals and entities (Licensees), and dismiss applications they have pending.¹ Petitioners allege that the Licensees have abused the Commission’s licensing processes by failing to disclose the real party in interest in applications, lacked candor or misrepresented facts in their applications, and trafficked in Commission licenses. For the reasons set forth below, we deny the Petition.

¹ Informal Request for Initiation of License Revocation Proceeding (filed Aug. 16, 2002) (Petition); Supplement to Informal Request for Initiation of License Revocation Proceeding (filed Aug. 29, 2002) (Supplement). Petitioners prefer to remain unidentified. Petition at 1 n.1.

II. BACKGROUND

2. Petitioners make three general allegations. Specifically, Petitioners allege that the Licensees have abused the Commission's processes by failing to disclose the real party in interest in their applications.² The Petitioners further assert that it appears the parties have lacked candor or misrepresented information to the Commission, in particular with respect to their asserted eligibility and mobile loading.³ Lastly, the Petitioners allege that it appears some or all of the Licensees have trafficked or attempted to traffic in Commission authorizations.⁴

3. *Real Party in Interest.* Petitioners state that all of the captioned individuals and entities "appear[] to be connected with Thomas K. Kurian [(Kurian)]."⁵ The Petition compiles information from various applications and licenses in an effort to demonstrate this connection, including the fact that Kurian is listed as president, officer or contact person in various license applications; common station locations, mailing addresses, telephone and fax numbers; and assignment of licenses to Kurian or RF Data.⁶ In addition, Petitioners submit a copy of a fax and e-mails from Kurian soliciting interest in frequencies assigned to some of the Licensees.⁷

4. *Lack of Candor or Misrepresentation.* Next, Petitioners assert that the Licensees have lacked candor and/or misrepresented information in license applications.⁸ Specifically, Petitioners question the legitimacy of the applications' description of the applicants' business activity, and assert that the applications "have been structured carefully to comply with the rules for the specific spectrum band requested."⁹ Petitioners assert that most applicants for a Private Land Mobile Radio (PLMR) system are entities with an established business and an identified need for two-way radio communications, but the Licensees do not appear to be engaged in the described business activities prior to the filing of the applications.¹⁰ Petitioners assert that the number and diversity of individuals, the geographic areas involved, and the relationship of the individuals and geographic areas to Kurian is highly unusual, and suggest that the business activity statements are misrepresentations.¹¹ Petitioners also question the number of frequencies requested and mobile loading claimed in the applications.¹² In this connection, they note that the applications often request all remaining channels in a particular geographic area, and always claim exactly the loading required to obtain exclusive use of the channel.¹³ Petitioners also assert that the "mobile loading claimed on certain applications defies credulity."¹⁴

5. *Trafficking in Commission licenses.* Finally, Petitioners assert that a large number of authorizations presently held by one of the Licensees subsequently were assigned either to Kurian or a

² Petition at ii.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 10.

⁶ *Id.* at 9-15; Supplement at 2-3.

⁷ Supplement at Ex. 1-4.

⁸ Petition at 15-16.

⁹ *Id.* at 17.

¹⁰ *Id.* at 16-17.

¹¹ *Id.* at 20.

¹² *Id.* at 19.

¹³ *Id.*

¹⁴ *Id.* at 21.

third party.¹⁵ They also state that “it is not uncommon” for Kurian to solicit offers to purchase spectrum.¹⁶ In addition, the Petitioners have produced e-mails and a fax, previously discussed, in which Kurian, solicits bids for the purchase of frequencies licensed to himself and some other Licensees.¹⁷ Petitioners assert that there is a pattern of license acquisition followed quickly by license assignment that it believes is persuasive evidence that Kurian is trafficking in Commission licenses.¹⁸

III. DISCUSSION

6. Although the Commission does not recognize a formal right to seek revocation of a license, it has treated such requests as informal requests for action under Section 1.41 of the Commission’s Rules.¹⁹ Because we are treating the Petition as an informal request, we agree with Petitioners²⁰ that they are not required to demonstrate standing.²¹

7. Based upon our review and analysis the information before us, we conclude that the record in this proceeding does not support the initiation of a license revocation proceeding under any of the three theories cited by the Petitioners. The Commission has held that abuse of process is a broad concept that includes use of this agency’s processes to achieve a result that the process was not intended to achieve.²² The Commission only considers the possibility of sanctions in egregious cases where the abusive nature of the action is clear.²³

8. *Real Party in Interest.* The standard for determining an application’s real party in interest is whether the individual has an ownership interest or is or will be in a position to actually or potentially control the operation of the station.²⁴ We conclude that even if all the evidence in the subject petitions is considered true, Petitioners have not made a prima facie case that Kurian is the real party in interest in any of the subject applications. The evidence, taken in the light most favorable for the Petitioners, shows that the licenses authorize stations in the same areas²⁵ and on the same frequency bands.²⁶ Some applications contain Kurian- or RF Data-related addresses and phone numbers, and/or list Kurian as the contact person. Some licenses subsequently were assigned to Kurian or RF Data. With respect to some other licenses, Kurian sent e-mails that listed other Licensees’ stations in RF Data’s “frequency holding.”

¹⁵ *Id.* at 23.

¹⁶ *Id.*

¹⁷ Supplement at Ex. 1-4.

¹⁸ Petition at 23.

¹⁹ 47 C.F.R. § 1.41. *See, e.g.,* Ronald Brasher, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, 15 FCC Rcd 16326, 16328 n.1 (2000) (*Brasher*).

²⁰ *See* Petition at 1 n.1.

²¹ *See, e.g.,* National Science and Technology Network, Inc., *Order on Further Reconsideration*, 17 FCC Rcd 11133, 11136 ¶ 5 (WTB PSPWD 2002) (citing, *e.g.,* WINN, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 2032 (1998)).

²² *Cf. Brasher*, 15 FCC Rcd at 16331 ¶ 9.

²³ *See, e.g.,* Litigation Recovery Trust, *Memorandum Opinion and Order*, 17 FCC Rcd 21852, 21857-58 ¶ 11 (2002).

²⁴ High Sierra Broadcasting, Inc., *Decision*, 96 FCC 2d 423, 427 (Rev. Bd. 1983).

²⁵ *See* Petition at 11. Arizona, California, Florida, Hawaii, Kentucky, Mississippi, New Jersey, New Mexico, New York, Nevada, Oklahoma and Texas are listed as locations.

²⁶ *Id.* at 3-9. The frequencies listed are in the 450-512 MHz, 800 MHz, and 900 MHz bands.

9. After reviewing the record in this proceeding, we find that none of these facts, individually or collectively, establishes a prima facie case that Kurian is the real party in interest in any of the applications or licenses at issue. Further, we are not persuaded that this evidence establishes a prima facie case that any of the Licensees misrepresented or omitted any facts in their applications in violation of the Commission's rules.²⁷

10. As noted above, the issue is whether Kurian actually or potentially controls the stations licensed to the other Licensees. While the individuals and entities clearly have prior business relationships, we find that no individual fact or that the facts taken collectively constitute a prima facie showing of an ability by Kurian to control the operation of any of the instant radio stations at the time of licensure. Petitioners do not allege, for example, that Kurian signed the initial applications, or that he oversees the daily operations, or that the other Licensees do not have any involvement with the stations.²⁸ Nor do they allege that the other Licensees are under Kurian's control, or present evidence of any plan or agreement to assign the stations to Kurian at a later date.²⁹ Use of the same address and telephone number does not demonstrate control by Kurian.³⁰ Operation at the same location and frequency band as Kurian and others does not demonstrate control by Kurian.³¹ Nor does the subsequent assignment of other licenses to Kurian indicate that Kurian had the ability to control operations prior to the assignment.³² While Kurian's e-mails and fax can be read to suggest that Kurian holds each license, it is equally plausible that Kurian was acting as an agent for the other Licensees whose call signs are listed in the communications.³³ Thus, Kurian's reference only to RF Data as "holding" the licenses may be an inaccurate phrasing rather than a claim of ownership.³⁴ Based on the record before us, we conclude that Petitioners have not established the existence of any agreement between the parties or even the likelihood of an agreement of the parties concerning control of the stations.

11. *Lack of Candor or Misrepresentation.* Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.³⁵ The standard for misrepresentation is a false statement with intent to deceive.³⁶ The Commission relies heavily upon the honesty of its applicants and may disqualify an applicant who misrepresents or lacks candor in its dealing with the Commission.³⁷

²⁷ See 47 C.F.R. §§ 1.17 (misrepresentation or willful omission is prohibited in any written statement to the Commission), 1.923(a) (applications must contain all information requested on the form or by applicable rule).

²⁸ See, e.g., William L. Zawila, *Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order*, FCC 03-158, ¶¶ 52-53, 62, 99-100 (rel. July 16, 2003).

²⁹ See, e.g., Hicks Broadcasting of Indiana, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 13 FCC Rcd 10662, 10672 ¶¶ 31-33, 10676 ¶ 44 (1998).

³⁰ Jose Francis, *Order on Reconsideration*, 17 FCC Rcd 21136, 21139 ¶ 9 (WTB PSPWD 2002).

³¹ *Id.*

³² *Id.*

³³ We find this interpretation more consistent with the manner in which the licensee list is presented, for the communications list Licensees other than RF Data.

³⁴ The Petitioners have not alleged either that Kurian received and kept any payments for assigned licenses or that he signed other Licensee's assignment applications.

³⁵ *Fox River Broadcasting, Inc.* 93 FCC 2d 127, 129 (1983) (*Fox River*); see also *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Garden State Broadcasting Ltd. Partnership v. FCC*, 996 F.2d 386, 393 (D.C. Cir. 1993) (*Garden State*).

³⁶ *Fox River*, 93 FCC 2d at 129.

³⁷ See *In Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000), and cases cited therein.

12. We acknowledge the gravity of the Petitioner's allegations and their concerns regarding what they view to be a problem involving misrepresentation and lack of candor by Kurian and others in the Commission's licensing process. However, we find Petitioners' allegations, as set forth herein, to be unsupported and speculative. Petitioners have not shown that any statements in the Licensees' applications were false, let alone that the Licensees made false statements with intent to deceive. They seek to infer wrongdoing from the fact that the Licensees' applications meet all the requirements for the requested spectrum.³⁸ We do not draw such an inference. Indeed, the applications could not be approved if they did not comply with the Rules. Nor is there anything inherently wrong or untoward with requesting whatever spectrum is available. The Petitioners allege the aforementioned facts raise a question of a lack of candor based upon their otherwise unsupported statement that on a universal basis, there is no need for the number of frequencies sought by the Licensees because a fleet of more than fifty units in the Private Land Mobile Radio system is unusually large.³⁹

13. Petitioners present no evidence that any of the challenged statements were untrue. By way of comparison, the Commission has found cause to pursue misrepresentations where there is objective evidence of falsehood. For example, in *Ronald Brasher*, the Commission designated multiple PLMR station applications because there existed a factual basis to conclude that the purported applicants had either died prior to the date their signatures appear on their respective applications, or the applicants denied that they had applied for a license.⁴⁰ Unlike here, facts were presented that were mutually inconsistent with the information submitted in the various applications, thus raising issues of misrepresentation and lack of candor.⁴¹ Nor do Petitioners allege that the Licensees deliberately withheld any information the Commission requested.⁴²

14. *Trafficking in Commission licenses.* Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than the provision of telecommunication services to the public or for the licensee's own private use.⁴³

15. We find no probative value in the unsworn anonymous hearsay statement that Petitioners have been advised by "several [unidentified] companies around the country" that they were approached by Kurian.⁴⁴ Moreover, we are not inclined to find that willingness to sell a station is synonymous with trafficking. The Commission acknowledged that a legitimate PLMR licensee may nonetheless "be willing to forego use of the spectrum for the consideration offered" by another party when it authorized 800 MHz PLMR licensees to assign or transfer their spectrum to commercial licensees for use in

³⁸ See Petition at 17.

³⁹ See *id.* at 21. Given that Petitioners have declined to identify themselves, we are unable to compare the business descriptions, channel requests, and mobile showings in their applications with the information appearing in the applications that they wish us to scrutinize.

⁴⁰ Ronald Brasher, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 15 FCC Rcd 16326, 16332 ¶ 10 (2000).

⁴¹ See also, e.g., Family Broadcasting, Inc., *Order to Show Cause and Notice of Opportunity for Hearing*, 16 FCC Rcd 4330, 4335-36 ¶ 15 (2001) (FCC agent inspected authorized site and found no transmitter).

⁴² See *Garden State*, 996 F.2d at 393.

⁴³ 47 C.F.R. § 1.948(i). The Commission also has defined trafficking as "speculation, barter or trade in licenses." See *KaStar 73 Acquisition, LLC, Memorandum Opinion and Order*, 15 FCC Rcd 1615, 1619-20 ¶ 12 (1999).

⁴⁴ See Petition at 23.

commercial operations.⁴⁵ Petitioners have not presented objective evidence that the Licensees, in fact, do not have legitimate land mobile radio operations.

IV. CONCLUSION

16. We take seriously the misconduct alleged by the Petitioners. After careful consideration of the record, however, we believe that the Petition should be dismissed as unsubstantiated as it regards the revocation of the subject licenses. We do not conclude, herein, that the Licensees are in compliance with the rules; only that the allegations made by petitioners are speculative and lack the foundation that the Commission would require to merit commencement of license revocation proceedings. In view of the generalized, unfounded and speculative nature of the abuse of process, misrepresentation and trafficking allegations, we must deny the Petition. Nonetheless, we will not hesitate to scrutinize applications that merit further attention, and request additional information from applicants as appropriate to ensure that the letter and spirit of the Commission's licensing rules and policies are being followed.⁴⁶

17. 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 Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Request for Initiation of License Revocation Proceeding, filed August 16, 2001 and supplemented August 29, 2001 by the "Coalition for Accuracy in Licensing" IS DENIED.

18. 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

⁴⁵ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22760-61 ¶¶ 109-110 (2000).

⁴⁶ See, e.g., Samuel Moses PR, *Order on Reconsideration*, 18 FCC Rcd 2512, 2514 ¶ 7 (WTB PSPWD 2003) (in light of the loading and location requested, application was returned and applicant was asked to explain his business relationship with Kurian and RF Data).