

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

In the Matter of)	
)	
Application of)	File No. 0002584442
)	
Wireless US, LLC, Assignor,)	
)	
Nextel of California, Inc., Assignee,)	
)	
For Consent to Assignment of 851.1625 MHz)	
from Station WNXG805)	

ORDER

Adopted: May 9, 2007

Released: May 9, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On April 26, 2006, Wireless US, LLC (“Wireless”), and Nextel of California, Inc. (“Nextel”) (jointly, “Applicants”), filed the above-referenced application (“Application”) proposing a partial assignment of Station WNXG805 (“Station”). Specifically, the Applicants propose to assign frequency 851.1625 MHz from Station WNXG805 to Nextel, in exchange for 856.6625 MHz, which was assigned to Station WNXG805 pursuant to a separate application.¹ According to the Applicants, this frequency swap is being undertaken in support of the efforts of Nextel’s parent, Sprint Nextel Corporation, to reconfigure the 800 MHz band to address interference to public safety operations in the band.²

2. On May 5, 2006, Pappammal W. Kurian (“Petitioner”) filed a pleading entitled “Informal Objection” objecting to the grant of the Application and requesting the Commission to defer action.³ On May 18, 2006, Wireless filed an opposition asking that the Petition be dismissed or otherwise rejected.⁴ On May 26, 2006, Petitioner replied to the Opposition.⁵

3. For the reasons discussed below, we dismiss the Petition insofar as it might be treated under section 1.939 of the Commission’s rules as a Petition to Deny the Application.⁶ We also deny the

¹ See FCC File No. 0002467941 (granted March 27, 2006).

² Application, Exhibit 1 at 1. The application was placed on an accepted for filing public notice on May 3, 2006. Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and *De Facto* Transfer Lease Applications Accepted for Filing, *Public Notice*, Rpt. No. 2492 (rel. May 3, 2006).

³ Informal Objection of Pappammal Wellington Kurian, filed May 5, 2006 (“Petition”).

⁴ Opposition to Informal Objection of Wireless US LLC, filed May 18, 2006 (“Opposition”).

⁵ Informal Objection of Pappammal Wellington Kurian, filed May 26, 2006 (“Reply to Opposition”).

⁶ 47 C.F.R. § 1.939.

Petition insofar as it might be treated as an informal request to defer action on the Application pursuant to section 1.41 of the Commission's rules.⁷

II. BACKGROUND

4. Petitioner states that she was previously married to Thomas K. Kurian ("Mr. Kurian"), that while they were married, he held a number of Commission licenses in his name and in other names, and that they were divorced in 2005 pursuant to a decree of a Nevada court.⁸ Petitioner notes that, on September 22, 2003, the Nevada court issued a Joint Preliminary Injunction ("2003 Injunction") that, in part, prohibits transfers of marital assets or claimed marital assets, except in the normal course or for the necessities of life, without the consent of the other party or the permission of that court. Petitioner objects to the partial assignment of the Station to Wireless because she contends the Station is marital property awarded to her by the Nevada court and that it was assigned by Mr. Kurian to Wireless in March 2005 in violation of the 2003 Injunction.⁹ Petitioner accordingly asks the Commission to hold processing of the Application in abeyance while the disposition of this marital property remains under the jurisdiction of the Nevada court.¹⁰ By maintaining the status quo in this manner, Petitioner contends that the Commission will enable the Nevada court to determine the correct ownership of both the Station license and the frequency covered by the pending partial assignment of that license.¹¹

5. Wireless urges the Commission to reject the Petition because it is "blatantly defective, knowingly meritless, and a flagrant abuse of the Commission's processes."¹² Wireless contends it reached a voluntary agreement with certain subsidiaries of Sprint Nextel to assign frequency 851.1625 MHz to Nextel, as proposed in the Application. Wireless asserts that, if the Commission delays the pending assignment as requested by Petitioner, that delay would not only frustrate implementation of the Commission's 800 MHz reconfiguration plan but "it would also, rather ironically, result in a windfall to [Wireless] by allowing it to operate indefinitely on one more frequency than it previously was entitled to use."¹³

6. Wireless also notes that the Petitioner does not provide grounds for denying the referenced application, because "the Commission will not interject itself into disputes of a contractual nature, especially when they are already before a court of competent jurisdiction," and that this "is precisely the type of private dispute with respect to which the Commission defers to a court of competent jurisdiction."¹⁴ Wireless concludes that the Nevada court "is better positioned than the Commission to

⁷ 47 C.F.R. § 1.41.

⁸ Petition at 1.

⁹ *Id.* at 2; Reply to Opposition at 1. Petitioner further states that she and Mr. Kurian entered into a July 1, 2005, property settlement agreement ("Property Agreement") that required that "any and all assets of Entities . . . which were transferred wrongfully, fraudulently, and not in the ordinary course of business from the date of the joint preliminary injunction filed in the instant action are to be returned to RF Data Inc., and are to be the sole and separate property of. . . [the Petitioner]." *Id.* at 3. Petitioner asserts that the Nevada court adopted the Property Agreement on July 7, 2005. *Id.* Petitioner further states that she and Mr. Kurian entered into a Memorandum of Understanding ("MOU"), dated March 29, 2006, that required the assignment to the Petitioner of licenses transferred by Mr. Kurian in violation of the Agreement. *Id.* at 2-3. Petitioner contends that Mr. Kurian has violated that Property Agreement and MOU. *Id.* at 2.

¹⁰ Petition at 3; Reply to Opposition at 2-3.

¹¹ Petition at 3; Reply to Opposition at 2-3.

¹² Opposition at 1.

¹³ *Id.* at 2.

¹⁴ Opposition at 5 (citing Letter to Byron Mills, Esq., and Darren L. Walker, Esq., from Michael J. Wilhelm, Chief, Public Safety & Critical Infrastructure Division, WTB, at 2-3 (April 3, 2006) (*PSCID Letter*)). By order released

determine whether or not the proposed transactions would violate its injunction” and that it “also has adequate sanctions and remedial authority at its disposal if it concludes that the injunction has been violated.”¹⁵ Wireless further asserts that, notwithstanding its title, the Petition is intended to function as a petition to deny the pending application under section 1.939 of the Commission’s rules,¹⁶ but that it is defective because it fails to comply with the requirement of section 1.939(d) that such petitions “contain specific allegations of fact . . . supported by affidavit of a person or persons with personal knowledge thereof.”¹⁷ Wireless also claims the Petition is defective because it fails to satisfy the requirement of section 1.939(d) that the allegations be “sufficient to make a prima facie showing” that “grant of the application would be inconsistent with the public interest, convenience, and necessity.” Wireless asserts that, contrary to these requirements, “[t]he material allegations in the . . . [Petition] are simply statements of counsel” and they are neither supported by affidavits of persons with personal knowledge thereof nor are they matters of which the Commission may take official notice.¹⁸

III. DISCUSSION

7. Although the Petitioner has stated that the Petition is not a petition to deny, we must evaluate it either as a petition to deny under section 1.939¹⁹ or an informal request for Commission action under section 1.41.²⁰ In either case, as discussed below, the Petition does not provide a basis to deny or withhold action on the Application.

8. To the extent that the Petitioner’s request to defer Commission action on the pending Application represents a petition to deny the Application, we dismiss it as procedurally deficient. Under section 1.939(d) of the Commission’s rules, a petition to deny must “contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.”²¹ These “allegations of fact, except for those of which official notice may be taken,” must be “supported by

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April 17, 2007, the Mobility Division denied the petition for reconsideration of the *PSCID Letter* filed by Pappammal Kurian. In the Matter of Thomas K. Kurian, Assignor, AMTS Consortium, LLC, Assignee, Application for Consent to the Partial Assignment of the License for Public Coast Station WQCP809, FCC File No. 0002196859, *Order on Reconsideration*, DA 07-1729 (rel. April 17, 2007) (*Kurian-AMTS Consortium Reconsideration Order*). Wireless notes that, in that proceeding, Petitioner had objected to the proposed partial assignment by Mr. Kurian of call sign WQCP809 (“Kurian/AMTS Assignment”), similarly arguing that the proposed transaction would violate the 2003 Injunction and the Property Agreement. Opposition at 4 (citing Notification of Objection to the Pending Application for Assignments of Authorization and Transfers of Control, File No. 0002196859, at 1-2 (filed June 23, 2005)). Wireless notes that the Commission rejected Petitioner’s arguments in the Kurian/AMTS Assignment proceeding on the basis that that it was a private contractual matter that should be decided by a court of competent jurisdiction. *Id.* at 5 (citing Pappammal Kurian Notification of Objection to Assignment Applications, FCC File Nos., 0002196859, 0002204226; *PSCID Letter* at 2). Wireless contends that nothing in this proceeding warrants a result different from the disposition of Petitioner’s similar claims in the earlier proceeding. *Id.* at 9.

¹⁵ Opposition at 5 (citing *PSCID Letter* at 2-3).

¹⁶ 47 C.F.R. § 1.939.

¹⁷ Opposition at 6.

¹⁸ *Id.* at 6-7.

¹⁹ 47 C.F.R. § 1.939.

²⁰ 47 C.F.R. § 1.41.

²¹ 47 C.F.R. § 1.939(d).

affidavit of a person or persons with personal knowledge thereof.²² As Wireless notes, the Petition includes a number of allegations of fact of which official notice cannot be taken but which Petitioner fails to support with affidavits.²³

9. Second, to the extent that we consider the Petition as an informal request for Commission action pursuant to section 1.41,²⁴ we conclude that it does not provide adequate grounds for denying the Application or withholding action on the Application. To summarize, Petitioner asks that action on the Application be deferred so the Nevada court has adequate time to determine whether the underlying license or any portion thereof was ever part of the Kurians' marital property and, if so, whether the license or any portion thereof was assigned in violation of applicable court orders or related agreements. Should the Commission consent to the assignment of the subject frequency to Nextel, Petitioner contends, in effect, that she could be irreparably harmed.²⁵

10. The Commission has repeatedly held that private disputes and contractual matters should be resolved by courts of competent jurisdiction.²⁶ Further, absent a final court judgment raising issues within the Commission's jurisdiction, we would not ordinarily act on matters stemming from private contracts,²⁷ and, absent a prior court injunction specifically directed against the filing or processing of the application, we would not ordinarily withhold consent to an otherwise acceptable application.²⁸ The instant dispute is precisely the type of private dispute with respect to which the Commission defers to a court of competent jurisdiction. We believe that the Nevada court, with jurisdiction over the Kurians and their divorce proceeding, is better positioned to resolve competing claims regarding the Station in light of the applicable court orders or related agreements. We also believe that the court and this Commission have adequate sanctions and remedial authority at their disposal if the court concludes that any of its orders or related agreements have been violated.

²² *Id.*

²³ See Opposition at 6-7.

²⁴ 47 C.F.R. § 1.41.

²⁵ We note that the assignment application before the Commission in the *Kurian-AMTS Consortium Reconsideration Order* apparently involved Petitioner's interest in a portion of the proceeds associated with the sale of the license for Station WQCP809, rather than a claim to the license itself. See *Kurian-AMTS Consortium Reconsideration Order* at 4 ¶ 7 & n.25. This difference does not affect the applicability of our precedent regarding non-intervention in private disputes that are before a court of competent jurisdiction, as discussed below.

²⁶ See, e.g., *Kurian-AMTS Consortium Reconsideration Order* at 3 ¶ 6; Applications of Northwest Broadcasting, Inc., Assignor and Western Pacific, Inc., Assignee, *Memorandum Opinion and Order*, 12 FCC Rcd 3289, 3293 ¶ 10 (1997) ("*Northwest Broadcasting*"); Applications of Arecibo Radio Corporation (Assignor), Hato Abajo Development Corp. (Assignee), *Memorandum Opinion and Order*, 101 F.C.C.2d 545, 548 ¶ 8 (1985); Applications of Verestar, Inc. (Debtor-in-Possession) For Consent to Assignment of Licenses to SES Americom, Inc., IB Docket No. 04-174, *Memorandum Opinion, Order and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (IB, WTB 2004) ("*Verestar*"); Applications of Caribbean SMR, Inc., *Order*, 16 FCC Rcd 15663, 15664 ¶¶ 4, 5 (WTB CWD PRB 2003) ("*Caribbean SMR*"); Assignment of Call Sign WPFX961, From Elaine Hough, Assignor, To Chadmoore Wireless Group, Inc., Assignee, *Order*, 18 FCC Rcd 1875, 1877 ¶ 7 (WTB CWD 2003) ("*Hough*"); *Pueblo*, 13 FCC Rcd. at 133 ¶ 5; see also *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

²⁷ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Caribbean SMR*, 16 FCC Rcd at 15665 ¶ 5; *Hough*, 18 FCC Rcd at 1877 ¶ 7; *Sunbelt*, 18 FCC Rcd at 26404 ¶ 6.

²⁸ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Verestar*, 19 FCC Rcd at 22756 ¶ 16; *Hough*, 18 FCC Rcd at 1877 ¶ 7. This decision does not foreclose any relief to which Petitioner ultimately may be entitled based on the outcome of any subsequent litigation, if applicable. See, e.g., *Hough*, 18 FCC Rcd at 1877 ¶ 7; *Pueblo*, 13 FCC Rcd at 134 ¶ 6.

11. Moreover, the Commission's grant of consent to an application neither requires that the proposed transaction be consummated nor immunizes the parties from other legal consequences of consummation, such as those that may stem from the violation of applicable court orders or agreements with others.²⁹ Even if the Commission were to consent to such disputed assignment applications and the assignors and assignees were to later consummate those transactions on the basis of that consent, they would do so at their own risk.³⁰

12. On the record before us, we are unable to find that grant of the Application would be inconsistent with the public interest, convenience, and necessity.³¹ We also decline to defer action on the Application, and we consent to the pending assignment application.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and sections 0.131, 0.331, 1.41, 1.939 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.41, and 1.939, the "Informal Objection" filed by Pappammal W. Kurian on May 6, 2006, IS DISMISSED to the extent that it constitutes a petition to deny the above-captioned Application for Consent to Assignment, and IS DENIED to the extent that it constitutes an informal request for Commission action regarding that application.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunication Bureau

²⁹ See *PSCID Letter* at 2-3.

³⁰ See *id.* at 3.

³¹ See 47 C.F.R. § 1.939(d).