

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

In the Matter of)	
)	
PAPPAMMAL WELLINGTON KURIAN)	
)	
Petition for Reconsideration of Termination of Licenses for Stations WNZV897, WPRJ710, WPRJ822, WPSS730, WPTF350, WPTG203, WPTI446, WPTM571, WPTN582, WPUE314, WPUH219, WPUK749, WPUV444, WPUV507, WPUV897, WPVI848, WPWK546, WPWR859, WPXH414, WPUV229, WPXG547, WPUD819, WPXM428, WPSV798, WPUW301, WPSE807, WPXP537, WPUC846, WPVC703, WQCR857, WPTE714, WPUV418, KNNK909, WXNX838, WPRJ626, WQCI792, WPRM345)	FCC File Nos. 0002390995-0002391015, 0002391018-0002391019, 0002391021- 0002391024, 0002391026, 0002391028- 0002391032, 0002404771, 0002404790, 0002442669, 0002544801
)	
Petition for Reconsideration of Denial of Request for Modification of License for Station WQEJ993, Fresno, California)	FCC File Nos. 0002473225
)	
MOBILE RELAY ASSOCIATES)	
Petition for Reconsideration of Grant of Special Temporary Authorization for Station WQEI758, Santa Paula, California)	FCC File No. 0003408526

ORDER ON FURTHER RECONSIDERATION AND ORDER ON RECONSIDERATION

Adopted: April 20, 2009

Released: April 21, 2009

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition filed by Pappammal Wellington Kurian (Ms. Kurian) on November 9, 2007 seeking further reconsideration of an October 18, 2007 *Order on Reconsideration*¹ by the Wireless Telecommunications Bureau, Mobility Division (Division), which largely denied Ms. Kurian's request for reconsideration of the Division's denial² of her request to defer processing of certain license cancellation requests filed by her former husband, Thomas K. Kurian (Mr. Kurian).³ We also have before us a petition filed by Ms. Kurian on January 22, 2008 seeking

¹ Pappammal Wellington Kurian, *Order on Reconsideration*, 22 FCC Rcd 18660 (WTB MD 2007) (*Order on Reconsideration*).

² Letter dated Feb. 12, 2007, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to George L. Lyon, Jr., counsel for Pappammal Wellington Kurian (*2007 Division Letter*).

³ Letter from Ms. Kurian to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (received Nov. 9, 2007) (Kurian 2007 Petition). On November 19, 2007, we received two supplements to the Kurian 2007 Petition. See Letter from Ms. Kurian to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (received Nov. 19, 2007) (Kurian Supplement I); Ms. Kurian, Petition for Reconsideration (filed Nov. 19, 2007) (Kurian Supplement II). On March 13, 2008, Ms. Kurian filed a pleading relating to the implementation of that portion of the *Order on Reconsideration* that granted her request for

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reconsideration of the Division's denial⁴ of her request for modification of the license of Sam Gardali (Gardali) for Station WQEJ993, Fresno, California.⁵ Finally, we have before us a petition filed by Mobile Relay Associates (MRA) on May 19, 2008 seeking reconsideration of the renewal of Ms. Kurian's special temporary authorization (STA) under Call Sign WQEI758.⁶ For the reasons discussed below, we dismiss in part and deny in part Ms. Kurian's 2007 petition, and deny Ms. Kurian's 2008 petition and MRA's petition.

2. *Background.* Pursuant to the Marital Property Settlement Agreement (Settlement Agreement) executed by Ms. Kurian and Mr. Kurian, and approved by the District Court of Clark County, Nevada, Family Division on July 1, 2005, Mr. Kurian agreed to transfer his FCC licenses to Ms. Kurian.⁷ On November 28, 2005, Mr. Kurian requested cancellation of thirty-seven of his licenses.⁸ He later informed the Division's predecessor that he had requested these cancellations due to either a failure to construct or permanent discontinuance of station operations.⁹ Ms. Kurian objected to the cancellation requests, asserting that they were in conflict with the Settlement Agreement. While the cancellation requests were pending, Ms. Kurian was granted STAs authorizing operations at the same locations and on the same frequencies as some stations associated with the licenses for which Mr. Kurian had either sought to cancel or allowed to expire, including Stations WQEH403 (duplicating Station WPRK980) and WQEI758 (duplicating Station WPRM345).

3. On February 12, 2007, the Division denied Ms. Kurian's objection to the cancellation requests, concluding that it was appropriate to rely on the representations of Mr. Kurian, the licensee of record, about the non-construction of the subject stations or permanent discontinuance of their service, especially in the absence of any contrary evidence.¹⁰ Because the licenses had cancelled automatically for non-construction or permanent discontinuance of service,¹¹ the Division granted the bulk of the cancellation requests.¹² The Division concluded that Ms. Kurian's argument that the cancellation requests

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reconsideration. Letter from Ms. Kurian to Secretary, Federal Communications Commission (filed Mar. 13, 2008) (Kurian Supplement III).

⁴ Pappammal Kurian, *Letter*, 23 FCC Rcd 333 (WTB MD 2008) (2008 Division Letter).

⁵ Ms. Kurian, Petition to Protect STA Licenses (filed Jan. 22, 2008) (Kurian 2008 Petition).

⁶ MRA, Petition for Reconsideration (filed May 19, 2008) (MRA Petition).

⁷ Settlement Agreement at 1-2, attached to Kurian v. Kurian, Case No. D30700, *Decree of Divorce* (Dist. Ct. Family Div., Clark County, Nev. July 1, 2005); *see also* Kurian v. Kurian, Case No. D30700, *Order of the Court* at 2 (Dist. Ct. Family Div., Clark County, Nev. July 12, 2005).

⁸ *See* FCC File Nos. 0002390995, 0002390996, 0002390997, 0002390998, 0002390999, 0002391000, 0002391001, 0002391002, 0002391003, 0002391004, 0002391005, 0002391006, 0002391007, 0002391008, 0002391009, 0002391010, 0002391011, 0002391012, 0002391013, 0002391014, 0002391015, 0002391016, 0002391018, 0002391019, 0002391021, 0002391022, 0002391023, 0002391024, 0002391025, 0002391026, 0002391027, 0002391028, 0002391029, 0002391030, 0002391031, 0002391032, 0002391044. Mr. Kurian withdrew two other cancellation requests. *See 2007 Division Letter* at 2 n.11.

⁹ *See* Letter dated Nov. 29, 2005, from Thomas K. Kurian to Scot Stone, Esq., Public Safety and Critical Infrastructure Division. (Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).)

¹⁰ *See 2007 Division Letter* at 2.

¹¹ *See* 47 C.F.R. § 1.955(a).

¹² The Division concluded that three cancellation requests were moot because the licenses had expired, but that the licenses had canceled automatically. *See 2007 Division Letter* at 3 n.14.

conflicted with the Settlement Agreement was irrelevant to the question of whether the licenses had canceled for non-construction or permanent discontinuance of operations.¹³

4. On March 14, 2007, Ms. Kurian sought reconsideration of the Division's decision. MRA filed a partial opposition with respect to Station WPRM345, which the Division accepted out of time because MRA did not receive notice of the filing of Ms. Kurian's petition for reconsideration.¹⁴ The Division also granted MRA's motion to strike Ms. Kurian's reply to the partial opposition, on the grounds that the reply was untimely.¹⁵ On the merits, the *Order on Reconsideration* rejected Ms. Kurian's argument that the Division should not have credited Mr. Kurian's statements regarding non-construction or permanent discontinuance of operations, in light of the evidence of his unlawful intent to dispose of marital property in violation of the Settlement Agreement.¹⁶ The Division noted that Ms. Kurian cited no Commission precedent for declining to credit the unrefuted representation of the licensee of record because of outside litigation between the parties.¹⁷ It also concluded that, except with respect to two stations (Stations WPTE714 and WQCR857),¹⁸ the record on reconsideration did not contain any evidence to refute Mr. Kurian's representations that the stations were not constructed or that service had permanently discontinued.¹⁹ Consequently, the Division granted the petition for reconsideration only to the extent of reinstating the licenses for Stations WPTE714 and WQCR857. Ms. Kurian seeks reconsideration of the Division's decision.²⁰

5. On June 14, 2007, Ms. Kurian requested the initiation of modification proceedings with respect to the Gardali's license for Station WQJ993 on the grounds that it conflicted with her previously granted STA for Station WQEH403. The Division denied the request, because STAs are granted on a secondary, non-interference basis, so Station WQEH403 was not entitled to protection from Station WQJ993.²¹ Ms. Kurian seeks reconsideration of the Division's decision.²²

6. On April 24, 2008, the Division granted Ms. Kurian's application to renew her STA for Station WQEI758. MRA seeks reconsideration of that action.²³

¹³ See *id.* at 3.

¹⁴ See *Order on Reconsideration*, 22 FCC Rcd at 18660 n.1.

¹⁵ *Id.*

¹⁶ See *id.* at 18661-62 ¶ 4.

¹⁷ *Id.* at 18662 ¶ 4.

¹⁸ *Id.* at 18662 ¶ 5.

¹⁹ *Id.* at 18662 ¶ 4.

²⁰ See note 3, *supra*. On November 28, 2007, Mobile Relay Associates (MRA) filed a motion to strike the Kurian 2007 Petition, which we will treat as an opposition because it raises substantive as well as procedural issues. MRA, Motion to Strike Letter Request (filed Nov. 28, 2007).

²¹ See *2008 Division Letter*, 23 FCC Rcd at 333 (citing 47 C.F.R. § 1.931(b)).

²² See note 5, *supra*.

²³ See note 6, *supra*. Ms. Kurian's opposition, Letter from Ms. Kurian to Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau (received June 16, 2008), was untimely because the MRA Petition was filed May 19, 2006 and an opposition to a petition for reconsideration is due within ten days of the date on which the petition was filed with the Commission. See 47 C.F.R. § 1.106(g). Ms. Kurian does not allege any "extraordinary circumstances" to excuse her failure to timely file the opposition. Because the opposition is untimely, we will not consider arguments raised therein. See MRA, "Reply to Opposition to Petition for Reconsideration" (filed June 16, 2008); Ms. Kurian, Response to MRA Petition for Reconsideration (filed July 1, 2008). In any event, the

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7. *Discussion. Kurian 2007 Petition and Supplements.* In her November 13, 2007 petition, Ms. Kurian continues to argue that the cancellation requests were in violation of the Settlement Agreement, and that she has provided sufficient evidence that the subject stations were constructed and did not permanently discontinue service.²⁴ She also submits a list of stations that she contends were timely constructed, and copies of site leases from 2001-2002 to substantiate her claim that the stations remain in operation.²⁵ She also states that MRA did not serve her with its partial opposition (or motion to strike) and that she filed her reply immediately upon learning of the partial opposition from the Commission's licensing system online, and suggests that she would have prevailed had the Division considered her reply rather than dismissing it.²⁶

8. We dismiss this petition. First, it was filed in the wrong location. Specifically, it was submitted to the Division, but the Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary,²⁷ and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed.²⁸ We therefore dismiss the petition as misfiled.²⁹

9. Moreover, to the extent that Ms. Kurian reasserts that the cancellation requests should not have been granted because they violated the Settlement Agreement, the petition is subject to dismissal pursuant to Section 1.106(k)(3) of the Commission's Rules as repetitious, because it seeks reconsideration of an order which has been previously denied on reconsideration, and does not raise any new facts or issues of decisional significance.³⁰ Reconsideration is appropriate only where the petitioner either (1) demonstrates a material error or omission in the underlying order, or (2) raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.³¹ Ms. Kurian fails to demonstrate that the *Order on Reconsideration* contains any material error or omission, and the additional documents that Ms. Kurian now submits without explaining why the documents could not have been provided earlier in the proceeding do not satisfy the second prong.

10. We are also unpersuaded by Ms. Kurian's claim that she was not served with MRA's partial opposition or motion to strike. According to the certificate of service attached to the partial opposition, MRA served a copy on the attorney who filed Ms. Kurian's petition for reconsideration of the *2007 Division Letter*. The certificate of service attached to the motion to strike indicates that a copy was sent to the address listed for Ms. Kurian in the Commission's licensing records (Dunster Castle Drive).³² We

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opposition's substantive arguments were raised in Ms. Kurian's reply to MRA's opposition to Ms. Kurian's petition for reconsideration of the *2007 Division Letter*, and are discussed at note 33, *infra*.

²⁴ See Kurian 2007 Petition at 1-2.

²⁵ See *id.*, Attachments.

²⁶ See Kurian Supplement I at 1-2.

²⁷ 47 C.F.R. § 1.106(i).

²⁸ 47 C.F.R. § 0.401; see also 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission").

²⁹ See, e.g., ACR Electronics, Inc., *Letter*, 22 FCC Rcd 20962, 20963 (WTB MD 2007).

³⁰ 47 C.F.R. § 1.106(k)(3).

³¹ See *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964) (stating that "it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); see also 47 C.F.R. § 1.106(c).

³² Pursuant to Section 1.5 of the Commission's Rules, "each licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee," and "the address

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therefore conclude that Ms. Kurian was properly served with copies of both MRA's pleadings, and that the Division committed no error in dismissing her reply.³³

11. In her March 13, 2008 pleading, Ms. Kurian argues that the Division erred in reinstating the licenses for Stations WQCR857 and WPTE714 to active status in Mr. Kurian's name.³⁴ She states that the licenses should have been reinstated in her name, because they were awarded to her pursuant to the Settlement Agreement.³⁵ We disagree. The Division correctly reinstated the subject licenses to active status in the name of Mr. Kurian, who was the licensee of record. Absent a voluntary or involuntary assignment application,³⁶ the Division had no basis for changing the licensee information when it reinstated the licenses. Ms. Kurian's assertion that assignment to her is required pursuant to the Settlement Agreement should be addressed in the first instance to the Nevada state courts, for the Commission has long held that it is not the proper forum for the resolution of private contractual disputes,³⁷ absent a showing of a violation of a Commission rule or a federal statute.³⁸

12. Kurian 2008 Petition. In her January 22, 2008 petition, Ms. Kurian seeks reconsideration of the Division's denial of her request for modification of Gardali's license for Station WQEJ993 because it conflicts with her license for Station WQEH403, which is authorized to Ms. Kurian by STA.³⁹ Ms. Kurian argues that her STAs authorizing operation at the same locations and on the same frequencies as licenses originally held by Mr. Kurian should be afforded interference protection as if they were permanent authorizations "because of the prevailing extraordinary circumstances."⁴⁰ We disagree. Ms. Kurian obtained STAs authorizing transmission at the same locations and on the same frequencies as some

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contained in the licensee's most recent application will be used by the Commission for this purpose." 47 C.F.R. § 1.5(a). Ms. Kurian did not state her mailing address on her reply, as required by Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52. Nor does it appear that she properly served MRA, as required by Section 1.47 of the Commission's Rules, 47 C.F.R. § 1.47. Therefore, we conclude that it was reasonable for MRA to send its motion to strike to Ms. Kurian's Dunster Castle Drive address.

³³ Moreover, we note that consideration of the information set forth in the reply would not have changed the outcome. Ms. Kurian submitted a copy of an unexecuted agreement for MRA to purchase the license for Station WPRM345 from her, and argued that the station therefore must have been constructed and in operation. This evidence supports no such conclusion, however, and is in no way inconsistent with a finding that the station license had terminated. She also submitted a lease agreement pertaining to her Station WQE1758, but a lease for Station WQE1758, for which an STA (duplicating Station WPRM345) was granted, is no evidence of the prior construction or operational status of Station WPRM345.

³⁴ See Kurian Supplement III at 1. This pleading was filed in the correct location, and was timely filed within thirty days of the Division's February 22, 2008 action reinstating the licenses.

³⁵ See *id.* at 1, Exhibit A.

³⁶ We note that an application to assign the license for Station WPTE714 (and other licenses) from Mr. Kurian to Ms. Kurian was filed in 2005, but Mr. Kurian filed a request to withdraw the application, which was granted in 2007. See FCC File No. 0002382234. Ms. Kurian neither opposed the withdrawal request nor sought for reconsideration of the grant of the withdrawal request.

³⁷ See, e.g., PCS 2000, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 1681, 1691 ¶ 23 (1997); John F. Runner, Receiver (KBIF), *Memorandum Opinion and Order*, 36 R.R. 2d (P&F) 773, 778 (1976).

³⁸ See, e.g., Loral Corporation, *Memorandum Opinion and Order*, 12 FCC Rcd 21164, 21172-73 ¶ 13 (IB 1997).

³⁹ See Kurian 2008 Petition at 1-2.

⁴⁰ See Kurian 2008 Petition at 2. In addition to Station WQEH403, Ms. Kurian seeks such treatment for her STAs under Call Signs WQE1307, WQE1308, WQE1758, and WQE1759. The petition also lists Station WQEU734, but we note that this is a permanent authorization rather than an STA.

stations formerly licensed to Mr. Kurian, the licenses for which expired or canceled automatically.⁴¹ She did not apply for new permanent authorizations.⁴² Gardali applied for a permanent authorization, which was granted on February 16, 2006. Ms. Kurian's authorizations are STAs, granted on a secondary, non-interference basis, and, not entitled to inference protection against permanent stations. Therefore, we conclude that the Division did not err in denying Ms. Kurian's modification request with respect to Gardali's license for Station WQEJ993.

13. MRA Petition. In its May 19, 2008 petition, MRA seeks reconsideration of the Commission's grant of Ms. Kurian's most recent application to renew her STA under Call Sign WQEI758.⁴³ MRA argues, *inter alia*, that because Station WQEI758 would cause impermissible interference to operation of MRA's co-channel Station KXX718, Santa Paula, California, the STA grant should be rescinded.⁴⁴ As noted above, however, the STA grant is secondary to MRA's permanent authorization. Given that MRA has reported no interference from Station WQEI758, we conclude that Ms. Kurian is complying with all applicable rules as required. The STA may be terminated at the Division's discretion if subsequent conditions warrant.⁴⁵

14. *Conclusion and Ordering Clauses*. For the reasons stated above, we conclude that the Division was correct in denying Ms. Kurian's petition for reconsideration of the *2007 Division Letter* with respect to the bulk of the licenses at issue, and reinstating only the licenses for Stations WQCR857 and WPTE714 to active status in the name of Mr. Kurian, the licensee of record. As stated above, the Division also correctly denied Ms. Kurian's modification request with respect to Gardali's Station WQEJ993, because Ms. Kurian's STAs are secondary to permanent authorizations. For the same reason, the renewal of Ms. Kurian's STA under Call Sign WQEI758 was in compliance with the Commission's rules and policies.

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for further reconsideration submitted by Pappammal Wellington Kurian on November 9, 2007 and supplemented on November 19, 2007 IS DISMISSED.

16. IT IS FURTHER ORDERED that the petition for reconsideration filed by Pappammal Wellington Kurian on March 13, 2008 IS DENIED.

17. IT IS FURTHER ORDERED that the petition for reconsideration filed by Pappammal Wellington Kurian on January 22, 2008 IS DENIED.

18. IT IS FURTHER ORDERED that the petition for reconsideration filed by Mobile Relay Associates on May 19, 2008 IS DENIED.

⁴¹ See *2007 Division Letter* at 3 n.14.

⁴² We note that Ms. Kurian did attempt to renew the permanent authorizations duplicated by these STAs, but the applications were dismissed. Two renewal applications, FCC File Nos. 0002404771 and 0002404790, were dismissed as moot after the Division concluded that the licenses had canceled automatically. See *2007 Division Letter* at 3 n.14. One, FCC File No. 0002442683, was dismissed as untimely. Another, FCC File No. 0002556253, was dismissed for failure to prosecute. Ms. Kurian did not seek reconsideration of the dismissals.

⁴³ See MRA Petition at 1.

⁴⁴ See *id.* at 5-6.

⁴⁵ The authorization for Station WQEI758 is due to expire on June 1, 2009. In light of our decisions in this *Order on Further Reconsideration and Order on Reconsideration*, we do not anticipate granting any subsequent renewal applications.

19. 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 COMMUNICATION COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau