



Federal Communications Commission
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DA 09-889

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RE: "Opposition to Assignment of Authorization and Transfer of Control and Modification, Initiate License Revocation Proceedings" filed by Jose Francis, Joy Francis, Satheeshmoorthy Punniamurthy, and Richard Susainathan (collectively Petitioners)

Dear Petitioners:

On December 17, 2007, a petition seeking reconsideration of the grant of administrative update applications submitted by Pappammal Kurian (Ms. Kurian), and denial of pending applications for administrative update, assignment of authorization, and notification of consummation of assignment of authorization submitted by Ms. Kurian,¹ was filed by Jose Francis,² Joy Francis (individually and on behalf of Wireless US, LLC),³ Satheeshmoorthy Punniamurthy,⁴ and Richard Susainathan⁵ (collectively Petitioners).⁶ For the reasons, set forth below, we grant the petition, and will dismiss the applications.⁷

¹ Opposition to Assignment of Authorization and Transfer of Control and Modification, Initiate License Revocation Proceedings (filed Dec. 17, 2007) (Petition). We note that petitions to deny do not lie against applications involving only private radio licenses. See 47 U.S.C. § 309(a)-(b), (d); S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 (2001). Therefore, to the extent that the Petition refers to private radio licenses, we will treat it as an informal request for Commission action, pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41.

² Jose Francis seeks reconsideration of the grant of administrative update applications FCC File Nos. 0003252038 (WPRJ763), 0003252045 (WPUH217), 0003252052 (WPVA644), 0003252056 (WPVV972), 0003252057 (WPWD813), 0003252069 (WPYL571), and 0003252098 (WPWQ657); and petitions to deny assignment applications FCC File Nos. 0003253275 (WPRJ763, WPUH217, WPVA644, WPVV972, WPWD813, WPWQ657, WPYL571) and 0003253397 (WPUR576, WPUS424), and consummation notification FCC File No. 0003254480 (WPRJ763, WPUH217, WPVA644, WPVV972, WPWD813, WPWQ657, WPYL571).

³ Joy Francis seeks reconsideration of the grant of administrative update applications FCC File Nos. 0003252029 (WNXB397), 0003252030 (WPET423), 0003252031 (WNQQ750), 0003252032 (WPEE538), 0003252037

Background. Pursuant to the Marital Property Settlement Agreement (Settlement Agreement) executed by Ms. Kurian and her former husband, Thomas K. Kurian (Mr. Kurian), and approved by the District Court of Clark County, Nevada, Family Division (Family Court) on July 1, 2005, Ms. Kurian was awarded as her sole and separate property the business entities RF Data, Inc. dba Spectrum Wireless Corp. (RF Data), S M Leasing and Rental Ltd. dba Spectrum Wireless Corp. (S M Leasing), and Cashman Equipment and Leasing LLC (Cashman), and their current assets.⁸ In addition, Mr. Kurian

(WPRJ260), 0003252041 (WPEH585), 0003252042 (WPEX420), 0003252060 (WPWS602), 0003252062 (WPXB665), 0003252063 (WPXC447), 0003252064 (WPXE403), 0003252065 (WPXE465), 0003252078 (WPER954), 0003252080 (WPSI446), 0003252082 (WPFV991), 0003252083 (WPRK432), 0003252089 (WPWZ457), 0003252102 (WPSS284), and 0003252104 (WPXA578); and petitions to deny assignment applications FCC File Nos. 0003252947 (WNQQ750, WNXB397, WPEH585, WPER954, WPET423, WPEX420, WPEE538, WPFV991, WPXB665, WPXC447, WPXE403, WPXE465), 0003253054 (WPRJ260, WPRK432, WPSI446, WPWS602, WPSS284), and 00032553079 (WPWZ457, WPXA578), and consummation notification FCC File No. 0003254483 (WNQQ750, WNXB397, WPEH585, WPER954, WPET423, WPEX420, WPEE538, WPFV991, WPXB665, WPXC447, WPXE403, WPXE465).

⁴ Punniamurthy seeks reconsideration of the grant of administrative update application FCC File No. 0003252090 (WQAQ615); and petitions to deny administrative update applications FCC File Nos. 0003252040 (WPSF579), 0003252059 (WPWL307), 0003252061 (WPWW726), 0003252067 (WPXW674), 0003252068 (WPYC621), 0003252093 (WPWW267), 0003252099 (WPXE739), and 0003252105 (WPYC622), and assignment application FCC File No. 0003254591 (WPX674, WPYC621, WPYC622, WQAQ615, WPSF579, WPWL307, WPWW267, WPWW726, WPXE739, WPUF397, WPUQ452).

⁵ Susainathan petitions to deny administrative update applications FCC File Nos. 0003252035 (WPMM230), 0003252043 (WPTN307), 0003252046 (WPUK748), 0003252047 (WPUR490), 0003252048 (WPUV250), 0003252053 (WPYB720), 0003252054 (WPVS894), 0003252055 (WPVT930), 0003252058 (WPWD867), 0003252066 (WPXQ240), 0003252070 (WPZY496), 0003252079 (WPRI701), 0003252081 (WPUS222), 0003252084 (WPUT907), 0003252085 (WPWF655), 0003252086 (WPXQ416), 0003252091 (WPRH397), 0003252092 (WPUT514), 0003252096 (WPUG765), 0003252097 (WPVK775), 0003252103 (WPUY971), and assignment application FCC File No. 0003254520 (WPMM230, WPRH397, WPRI701, WPTN307, WPUG765, WPUK748, WPUR490, WPUS222, WPUT514, WPUT907, WPUV250, WPUY971, WPYB720, WPVK775, WPVS894, WPVT930, WPWD867, WPWF655, WPZY496, WPXQ240, WPXQ416).

⁶ Ms. Kurian filed an opposition to the Petition. *See* Reply to “Opposition to Assignment of Authorization and Transfer of Control and Modification, Initiate License Revocation Proceedings” (filed Jan. 15, 2008) (Opposition). Joy Francis (individually and on behalf of Wireless US LLC), Punniamurthy, and Susainathan jointly filed a reply. *See* Response to Reply to “Opposition to Assignment of Authorization and Transfer of Control and Modification, Initiate License Revocation Proceedings” (filed Feb. 7, 2008) (Reply). On February 26, 2008, Ms. Kurian filed a motion for extension of time to file responsive pleadings. Motion for Extension of Time (filed February 26, 2008). We note, however, that the Reply completes the pleading cycle in this proceeding, *see* 47 C.F.R. § 1.45, so we deny the motion.

⁷ We note that we also have received e-mails from the litigants regarding this matter. Electronic filing of pleadings (*i.e.*, by facsimile or electronic mail) is no longer permitted, however. *See* Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 22 FCC Rcd 11381 (2007). Accordingly, we will not separately discuss the e-mails. Nonetheless, we note that the matters raised in these submissions are addressed by the decision herein.

⁸ Settlement Agreement at 1, attached to Kurian v. Kurian, Case No. D30700, *Decree of Divorce* (Dist. Ct. Family Div., Clark County, Nev. July 1, 2005).

agreed to transfer to Ms. Kurian any and all FCC licenses then held in his name or in the names of the businesses awarded to her, and to “effectuate the assignment and transfer of any and all licenses currently held in the names of any other third-party, in which [Ms. Kurian] or the Entities may have an interest.”⁹

It appears that Ms. Kurian changed the Universal Licensing System (ULS) passwords for the Petitioners’ licenses, effectively precluding the Petitioners from taking any further action with respect to them. On December 6, 2007, she filed fifty-six administrative update applications to list herself as the contact for licenses held by the Petitioners.¹⁰ Twenty-seven of the applications were granted on December 7, 2007.¹¹

On December 7, 2007, Ms. Kurian filed three applications to assign licenses held by Joy Francis and Wireless US, LLC to her company, PCS LLC.¹² One of the applications¹³ was consented to on December 8, 2007, and Ms. Kurian’s December 10, 2007 consummation notification¹⁴ was accepted on December 11, 2007. Also on December 7, 2007, Ms. Kurian filed two applications to assign licenses held by Jose Francis to PCS LLC.¹⁵ One of the applications¹⁶ was consented to on December 8, 2007, and Ms. Kurian’s December 10, 2007 consummation notification¹⁷ was accepted on December 11, 2007. On December 10, 2007, Ms. Kurian filed applications to assign licenses held by Susainathan¹⁸ and Punniamurthy¹⁹ to PCS LLC. On December 17, 2007, the Wireless Telecommunications Bureau set aside

⁹ *Id.* at 2; *see also* Kurian v. Kurian, Case No. D30700, *Order of the Court* at 2 (Dist. Ct. Family Div., Clark County, Nev. July 12, 2005) (holding that the Settlement Agreement requires, *inter alia*, that “[Mr. Kurian] will award to [Ms. Kurian] as her sole and separate property business known as R.F. Data, Inc., Spectrum Wireless, Cashman Equipment and Leasing, and S.M. Leasing and Rental with any and all business equipment, licenses, and assets associated with said businesses,” as well as “any licenses or frequencies currently held in [Mr. Kurian’s] name having to do with the above-noted businesses”; and that “[a]ny and all assets previously transferred from R.F. Data, Inc., S.M. Leasing and Rental, Cashman Equipment and Leasing, and Spectrum [W]ireless are to be returned to [Ms. Kurian] no matter where located,” and “[Mr. Kurian] will assist [Ms. Kurian] in returning any assets from S.M. Leasing that belong to R.F. Data, Inc.”).

¹⁰ *See* FCC File Nos. 0003252029-32, 0003252035, 0003252037-38, 0003252040-43, 0003252045-48, 0003252052-59, 0003252060-70, 0003252078-86, 0003252089-93, 0003252096-99, 0003252102-05.

¹¹ FCC File Nos. 0003252029-32, 0003252037-38, 0003252041-42, 0003252045, 0003252052, 0003252056-57, 0003252060, 0003252062-65, 0003252069, 0003252078, 0003252080, 0003252082-83, 0003252089-90, 0003252098, 0003252102, 0003252104.

¹² *See* FCC File Nos. 0003252947, 0003253054, 0003253079.

¹³ FCC File No. 0003252947.

¹⁴ *See* FCC File No. 0003254483.

¹⁵ *See* FCC File No. 0003253275, 0003253397.

¹⁶ FCC File No. 0003253275.

¹⁷ *See* FCC File No. 0003254480.

¹⁸ *See* FCC File No. 0003254520.

¹⁹ *See* FCC File No. 0003254591.

its actions consenting to the December 7 assignment applications and accepting the December 10 consummation notifications, and returned them to pending status.

On December 17, 2007, the Petitioners filed the instant petition seeking reconsideration of the grant of the administrative update applications, and denial of the pending applications for administrative update, assignment of authorization, and notification of consummation of assignment of authorization. The Petitioners assert that Ms. Kurian acted improperly and without authority in attempting to take control of their licenses, because the Settlement Agreement did not award her any licenses held in their names.²⁰ Ms. Kurian argues that she acted properly and pursuant to the Settlement Agreement, because Mr. Kurian is the real party in control of the stations.²¹ She also alleges that some of the licenses were assigned to Petitioners by Mr. Kurian or his businesses in violation of a preliminary injunction issued by the Family Court in 2003.²²

On January 24, 2008, the Petitioners filed suit against Ms. Kurian in Clark County, Nevada District Court (Civil Court), and requested, *inter alia*, a preliminary injunction prohibiting her from exercising control over the licenses.²³ That matter remains pending, as does other Civil Court litigation between Ms. Kurian and the Petitioners.²⁴ It thus appears that the Nevada courts have not yet reached a final determination in these matters.

Discussion. The Commission has long held that it is not the proper forum for the resolution of private disputes, and that claims for redress stemming from such disputes should be sought in courts of competent jurisdiction.²⁵ In endeavoring “to reach a fair accommodation between its exclusive authority over licensing matters and the authority of State and local courts to decide contractual matters under State and local law,”²⁶ we will not interfere in private commercial disputes absent a showing of a violation of a

²⁰ See Petition at 2-4.

²¹ See Opposition at 3-5.

²² See *id.*; see also Kurian v. Kurian, Case No. D30700, *Joint Preliminary Injunction* at 1 (Dist. Ct. Family Ct., Clark County, Nev. Sept. 22, 2003) (prohibiting the parties from “transferring, encumbering, concealing, selling, or otherwise disposing of any of the joint, common or community property of the parties or any property which is the subject of a claim of community interest, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the Court”).

²³ See Francis v. Kurian, Case No. A555891, *Complaint* (Dist. Ct., Clark County, Nev., filed Jan. 24, 2008).

²⁴ Specifically, litigation also is pending between Ms. Kurian and Jose Francis, Joy Francis, and Wireless US LLC, see Wireless US LC v. Kurian, Case No. A513001; Kurian v. Wireless US LC, Case No. A541728, and between Ms. Kurian and Susainathan and Punniamurthy, see Susainathan v. Kurian, Case No. A505829; Susainathan v. Kurian, Case No. A514179.

²⁵ See, e.g., PCS 2000, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 1681, 1691 ¶ 23 (1997) (deferring to the courts to adjudicate matters involving private rights); John F. Runner, Receiver (KBIF), *Memorandum Opinion and Order*, 36 R.R. 2d (P&F) 773, 778 (1976) (local court of competent jurisdiction, not the FCC, is the proper forum to resolve private disputes); Decatur Telecasting, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 8622, 8624 ¶ 12 (MMB VSD 1992) (same).

²⁶ See Pacific Wireless Technologies, Inc., *Order*, 18 FCC Rcd 7833, 7837 ¶ 7 (WTB CWD 2003).

Commission rule or a federal statute.²⁷ This policy fully applies to disputes stemming from divorce decrees or marital property settlements, just as it does to other types of private disputes.²⁸ Indeed, the Wireless Telecommunications Bureau's former Public Safety and Critical Infrastructure Division²⁹ concluded in 2006 that the dispute between Ms. Kurian and one of the Petitioners over the ownership and control of SM Leasing was "precisely the type of private dispute with respect to which the Commission defers to a court of competent jurisdiction,"³⁰ and the Mobility Division reached the same conclusion in 2007 regarding the dispute between Ms. Kurian and another Petitioner over a different license.³¹

The Commission will accommodate final court decrees, unless it finds compelling public interest reasons to do otherwise.³² Consequently, the Commission has on rare occasion permitted a license to be assigned without the cooperation of the licensee of record or nominal controlling party, but it has done so only when such action is demonstrably consistent with, and in furtherance of, a clear mandate of the court.³³ The evidence that Ms. Kurian adduced in the instant proceeding falls far short of what is required to support a finding that Ms. Kurian is authorized to exercise control over the subject licenses. Given that we have been presented with no final court order definitively holding that Ms. Kurian is vested with legal authority to file applications on behalf of the licenses of record, we have no basis to depart from earlier

²⁷ See, e.g., Loral Corporation, *Memorandum Opinion and Order*, 12 FCC Rcd 21164, 21172-73 ¶ 13 (IB 1997).

²⁸ See Douglas Pelley, *Letter*, 23 FCC Rcd 759, 761 (MB AD 2008) (stating that, "[t]o the extent [a party] challenges compliance with the Divorce Decree, that too is a matter for state court resolution").

²⁹ 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).

³⁰ See Letter, dated April 3, 2006, from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, to Byron L. Mills, Esq. and Darren L. Walker, Esq., Mills & Mills L.L.C. at 2 (citing, e.g., *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contract disputes between licensees and others); *Listeners' Guild v. FCC*, 813 F.2d 465, 569 (D.C. Cir. 1987) (endorsing "the Commission's longstanding policy of refusing to adjudicate private contract law questions")), *recon. denied*, Thomas K. Kurian, *Order on Reconsideration*, 22 FCC Rcd 7318 (WTB MD 2007).

³¹ See Wireless US, LLC, *Order*, 22 FCC Rcd 8643, 8646-47 ¶¶ 10-11 (WTB MD 2007).

³² See, e.g., Inforum Communications Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 820, 827 ¶ 12 (2005) (noting that it is the Commission's policy "to accommodate court decrees adjudicating disputes over contract and property rights, unless a public interest determination compels a different result"). The Commission does not, however, have a policy of accommodating "only a partial judgment issued by a state court." See Stop 26 Riverbend, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 22734, 22736 ¶ 5 (2003).

³³ See, e.g., Dale J. Parsons, *Memorandum Opinion and Order*, 10 FCC Rcd 2718 (1995) (granting the application of a court-appointed receiver to assign a license from the licensee of record to the receiver, and then from the receiver to a third party), *aff'd per curiam*, 93 F.3d 986 (D.C. Cir. 1996); O.D.T. International, *Memorandum Opinion and Order*, 9 FCC Rcd 2575 (1994) (granting an application filed by a bankruptcy court-appointed trustee for involuntary assignment of a license to the trustee, while dismissing a *pro forma* assignment application covering the same license that was filed by the licensee of record); Arecibo Radio Corp., *Memorandum Opinion and Order*, 101 F.C.C. 2d 545 (1985) (granting application for assignment of broadcast licenses that was signed not by the licensee, but by a court official at the direction of the court).

decisions addressing Ms. Kurian's authority to take specific actions with respect to licenses held by other parties.

We conclude, therefore, that Ms. Kurian has not provided a sufficient basis for granting the applications for administrative update, assignment of authorization, and notification of consummation of assignment of authorization. Consequently, we grant the Petitioners' petition. The applications that were granted³⁴ will be returned to pending status, and then they and the other pending applications³⁵ will be dismissed. In addition, we direct the licensing staff to take appropriate action to restore Petitioners' ULS access to the licenses for which each is the licensee of record.³⁶

Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), 309(d), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), 405, and Sections 1.41, 1.106, and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, 1.939, that the Opposition to Assignment of Authorization and Transfer of Control and Modification, Initiate License Revocation Proceedings filed by Jose Francis, Joy Francis (individually and on behalf of Wireless US, LLC), Satheshmoorthy Punniamurthy, and Richard Susainathan on December 17, 2007, partially treated as an Informal Objection, IS GRANTED TO THE EXTENT SET FORTH ABOVE.

IT IS FURTHER ORDERED that the applications listed in footnote 11 SHALL BE REINSTATED TO PENDING STATUS, and the applications listed in footnotes 10-19 SHALL BE DISMISSED consistent with this action and the Commission's rules and policies.

IT IS FURTHER ORDERED that the Motion for Extension of Time filed by Pappammal Kurian on February 26, 2008 IS DENIED.

IT IS FURTHER ORDERED that the Application for Ren[e]wal of Call Sign WPEH 585 and Request to Give Access to the ULS System and Password and the Application for Ren[e]wal of Call Sign WPEH 585, WPER954 and Request to Give Access to the ULS System and Password filed by Joy Francis (individually and on behalf of Wireless US, LLC) on December 30, 2008 and March 2, 2009, respectively, ARE DISMISSED AS MOOT.

IT IS FURTHER ORDERED, 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 1.41 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.939, that the Commission's licensing database SHALL BE MODIFIED to afford Jose Francis, Joy Francis (individually and on behalf of Wireless US, LLC), Satheshmoorthy Punniamurthy, and Richard Susainathan electronic access to the licenses for which each is the licensee of record.

³⁴ See *supra* note 11.

³⁵ See *supra* notes 10, 12-19.

³⁶ With respect to the subject licenses that expired or will expire because Petitioners could not renew them due to their lack of ULS access, we hereby grant Petitioners a waiver to file untimely renewal applications within thirty days of the date that their ULS access to the licenses is restored. Any such late-filed renewal application should attach or reference this letter.

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

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cc:

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