



Federal Communications Commission
Washington, D.C. 20554

April 21, 2009

DA 09-891

Pappammal Kurian
S M Leasing and Rental
5740 South Arville, Suite 206
Las Vegas, NV 89118

RE: Petition to deny application FCC File No. 0002566618 to assign licenses from S M Leasing and Rental Ltd. to Richard R. Susainathan
Petition to deny application FCC File No. 0003300927 to cancel license for Station WPTG843, Dallas, Texas

Dear Ms. Kurian:

This letter addresses the petition you filed on April 12, 2007,¹ opposing the above-referenced application filed by Richard R. Susainathan (Susainathan) for the *pro forma* assignment of sixty-seven private land mobile radio and private fixed microwave licenses to him from S M Leasing and Rental Ltd. (S M Leasing)²; and the petition you filed on January 30, 2008,³ opposing the above-referenced

¹ Pappammal Kurian Petition to Deny (filed Apr. 12, 2007) (Informal Objection to Assignment). Although you refer to the pleading as a petition to deny, 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). We therefore treat the pleading as an informal request for Commission action, pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41. 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 the e-mails are addressed by the decision herein.

² FCC File No. 0002566618 (filed Apr. 11, 2006, amended Apr. 10, 2007 and Apr. 26, 2007). The assignment application originally listed sixty-nine licenses. On April 26, 2007, Susainathan amended the assignment application at Commission direction to remove Station WNVJ741, Las Vegas, Nevada, because it is a Specialized Mobile Radio license, and Susainathan, having indicated through the April 10, 2007 amendment of the assignment application that he is an alien, is not qualified to hold a common carrier license. See 47 U.S.C. § 310(b)(1). (Susainathan concurrently filed an application to change the regulatory status of Station WNVJ741 from common carrier to private. See FCC File No. 0003007159 (filed April 26, 2007). That application remains pending, as does an application filed by Pappammal Kurian to list herself as the contact person regarding that license. See FCC File No. 0003015041 (filed May 2, 2007).) The Commission later removed Station WPXY504, Mobile, Alabama from the assignment application through data correction, following a finding that the license had canceled automatically due to permanent discontinuance of station operation, pursuant to Section 90.157 of the Commission's Rules, 47 C.F.R. § 90.157. See Letter, dated July 6, 2007, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Richard R. Susainathan. Accordingly, the assignment application now includes sixty-seven licenses.

³ Pappammal Kurian Petition to Deny (filed Jan. 30, 2008) (Informal Objection to Cancellation). S M Leasing filed an Opposition on February 8, 2008, and you filed a Reply to Opposition on March 3, 2008.

application filed by Susainathan to cancel the license for Station WPTG843, Dallas, Texas.⁴ For the reasons set forth below, we deny your petitions, and will grant the applications.

Background. Pursuant to the Marital Property Settlement Agreement (Settlement Agreement) executed by you and your former husband, Thomas K. Kurian, and approved by the District Court of Clark County, Nevada, Family Division (Family Court) on July 1, 2005, S M Leasing was awarded to you.⁵ You contend that you are therefore the owner of S M Leasing, and that Susainathan may not assign the S M Leasing licenses to himself⁶ or cancel them.⁷ Susainathan asserts, however, that he owns S M Leasing; that neither you nor Thomas K. Kurian was ever an owner, officer, or employee of S M Leasing; and that S M Leasing therefore should not have been included among the Kurians' marital assets.

On November 9, 2005, the Family Court denied Susainathan's motion to intervene in the divorce proceeding, stating that it had not made a determination of the ownership of S M Leasing with relation to third parties who were not parties to this divorce action, and that the ownership of S M Leasing could be determined in separate litigation filed by Susainathan against you in Clark County, Nevada District Court (Civil Court).⁸ The Civil Court held an evidentiary hearing and concluded on January 18, 2006 that you hold an interest in S M Leasing, but referred the matter to the Family Court to determine the extent of your interest.⁹ It thus appears that the Nevada courts have not yet reached a final determination in these matters.

On April 11, 2006, Susainathan filed the above-referenced assignment application. On January 16, 2008, Susainathan filed the above-referenced cancellation application.

⁴ See FCC File No. 0003300927 (filed Jan. 16, 2008).

⁵ The Settlement Agreement provides that "Pappammal is awarded and shall receive as her sole and separate property the following business entities SM Leasing and Rental Ltd., dba Spectrum Wireless Corp. ..." and that "Thomas agrees to assign and transfer to Pappammal any and all FCC licenses for frequencies currently held in the name[] of ... SM Leasing and Rental LLC." 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) (holding that the Settlement Agreement requires, *inter alia*, that "[Thomas K. Kurian] will award to [Pappammal Kurian] as her sole and separate property ... S.M. Leasing and Rental with any and all business equipment, licenses, and assets associated with said business[]...", as well as "any licenses or frequencies currently held in [Thomas K. Kurian's] name having to do with the above-noted business[]," and that "[a]ny and all assets previously transferred from ... S.M. Leasing and Rental ... are to be returned to [Pappammal Kurian] no matter where located").

⁶ See Informal Objection to Assignment at 1.

⁷ See Informal Objection to Cancellation at 1.

⁸ Kurian v. Kurian, Case No. D30700, *Order Denying Motion to Intervene* at 2 (Dist. Ct. Family Div., Clark County, Nev. Nov. 9, 2005); see also Kurian v. Kurian, Case No. D30700, *Decision* at 1 (Dist. Ct. Family Div., Clark County, Nev. Aug. 4, 2005) (denying Pappammal Kurian's motion to add counterclaims against, *inter alia*, Susainathan, on the grounds that a claim against Susainathan would be properly filed in Civil Court rather than Family Court); Kurian v. Kurian, Case No. D30700, *Order Dismissing Counter-Claims for Civil Conspiracy* at 2 (Dist. Ct. Family Div., Clark County, Nev. Mar. 6, 2007) (dismissing counterclaim by Pappammal Kurian against Susainathan).

⁹ See Susainathan v. Kurian, Case No. A505829, *Order* at 2, 3 (Dist. Ct. Clark County, Nev. Jan. 18, 2006). In addition, Susainathan and others have filed suit against Pappammal Kurian regarding these and other licenses. See Francis v. Kurian, Case No. A555891, *Complaint* (Dist. Ct., Clark County, Nev. filed Jan. 24, 2008).

Discussion. These are not the first applications that you have opposed on the grounds that a grant would conflict with the Nevada court proceedings. In 2006, the Wireless Telecommunications Bureau's former Public Safety and Critical Infrastructure Division (PSCID)¹⁰ rejected your informal objection to an earlier application¹¹ filed by Susainathan for the *pro forma* assignment of licenses to him from S M Leasing.¹² PSCID noted that the Commission has a well-settled policy of not interjecting itself into private disputes, especially when they already are before a court of competent jurisdiction, and concluded that the dispute between Susainathan and you over the ownership of S M Leasing was "precisely the type of private dispute with respect to which the Commission defers to a court of competent jurisdiction."¹³ In 2007, the Mobility Division rejected your objection to an application for partial assignment of another license that you argued was marital property, for the same reasons.¹⁴

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.¹⁵ 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,"¹⁶ we will not interfere in private commercial disputes absent a showing of a violation of a Commission rule or a federal statute.¹⁷ This policy fully applies to disputes stemming from divorce decrees or marital property settlements, just as it does to other types of private disputes.¹⁸

¹⁰ 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).

¹¹ See FCC File No. 0002204226 (filed June 15, 2005). Susainathan subsequently withdrew this application.

¹² 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. (*PSCID Letter*), *recon. denied*, Thomas K. Kurian, *Order on Reconsideration*, 22 FCC Rcd 7318 (WTB MD 2007) (*WQCP809 Recon Order*). The *PSCID Letter* also rejected your objection to a separate application that is not germane to the instant matter, FCC File No. 0002196859 (filed June 14, 2005) (seeking consent to partial assignment of the license for VHF Public Coast Station WQCP809).

¹³ See *id.* 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").

¹⁴ See *Wireless US, LLC, Order*, 22 FCC Rcd 8643, 8646-47 ¶¶ 10-11 (WTB MD 2007) (*Wireless US*). Unlike in the present matter, the licensee of record in that case was not specifically identified by name in the Settlement Agreement. We conclude, however, that this distinction is not relevant to our analysis.

¹⁵ 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).

¹⁶ See *Pacific Wireless Technologies, Inc., Order*, 18 FCC Rcd 7833, 7837 ¶ 7 (WTB CWD 2003).

¹⁷ See, *e.g.*, *Loral Corporation, Memorandum Opinion and Order*, 12 FCC Rcd 21164, 21172-73 ¶ 13 (IB 1997).

¹⁸ 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").

The Commission will accommodate final court decrees, unless it finds compelling public interest reasons to do otherwise.¹⁹ 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.²⁰ The evidence you have adduced in the instant proceeding, including the finding by the Family Court that you have some interest of an unspecified extent in S M Leasing, falls far short of what is required to support such extraordinary action here. As the Mobility Division stated in the 2007 decision discussed above, “absent a final court judgment raising issues within the Commission’s jurisdiction, we would not ordinarily act on matters stemming from private contracts, 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.”²¹ Given that we have been presented with no final court order definitively holding that you are entitled to sole ownership of S M Leasing, or specifically enjoining the filing of the above-referenced applications, we have no basis to depart from that earlier holding in resolving the instant matter.

We conclude, therefore, that the present petitions do not provide a sufficient basis for denying the above-referenced applications.²² Rather, pursuant to the Commission’s policy of generally accommodating and deferring to courts of competent jurisdiction, in the absence of compelling public reasons to do otherwise, we will process the applications in accordance with the Commission’s general rules and policies, and leave it to the Nevada courts to determine whether Susainathan’s filing of the applications and/or his consummation of the proposed assignment would violate an order of those courts.²³

¹⁹ 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).

²⁰ See, e.g., *Dale J. Parsons*, *Memorandum Opinion and Order*, 10 FCC Rcd 2718 (1995) (granting the application of a court-appointed receiver to assignee a licensee 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).

²¹ See *Wireless US*, 22 FCC Rcd at 8646 ¶ 10 (footnotes omitted).

²² We also find no basis to defer action until the Nevada court proceedings are concluded, at some undetermined future time. See *US Wireless*, 22 FCC Rcd at 8646 ¶¶ 9-10 (declining to defer action); *WQCP809 Recon Order*, 22 FCC Rcd at 7320-01 ¶ 7 (same). The Commission’s policy of not deferring action on an application pending the resolution of pending or future court litigation is as well settled as the Commission’s policy of not denying an application on such a basis. See, e.g., *Margaret Jackson*, *Memorandum Opinion and Order*, 18 FCC Rcd 26403, 26404-05 ¶ 6 (2003); *Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership*, *Memorandum Opinion and Order*, 15 FCC Rcd 22086, 22093 ¶ 22 (2000); *Allegan Cellular, L.P.*, *Order*, 14 FCC Rcd 20053, 20054 ¶ 2 (WTB CWD 1999).

²³ We emphasize that our decision herein should not be construed as based on any finding regarding the ownership of S M Leasing. We find only that, in the absence of any court order, there is nothing in the Commission’s rules and policies which would preclude granting the applications. If Susainathan chooses to consummate the proposed

Conclusion and Ordering Clauses. We therefore deny your April 12, 2007 petition, and will process the assignment application. In addition, we deny your January 30, 2008 petition, and will process the cancellation application.²⁴

We note that on May 3, 2007, you filed a request to withdraw the assignment application through the Commission's Universal Licensing System (ULS). It appears that you changed the ULS password for the S M Leasing licenses, effectively precluding Susainathan from taking any further action with respect to them.²⁵ In light of our disposition of your April 12, 2007 petition, we will not process your request to withdraw the assignment application. Similarly, we will dismiss your application to list yourself as the contact person with respect to Station WPXY504.²⁶ In addition, we direct the licensing staff to take appropriate action to restore Susainathan's ULS access to the S M Leasing licenses.

Accordingly, IT IS 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 Petition to Deny filed by Pappammal Kurian on April 12, 2007, treated as an Informal Objection, IS DENIED.

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 Petition to Deny filed by Pappammal Kurian on January 30, 2008, treated as an Informal Objection, IS DENIED.

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 application FCC File No. 0003300927 SHALL BE PROCESSED in accordance with this action and the Commission's rules and policies.

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 request to withdraw application FCC File No. 0002566618 SHALL NOT BE PROCESSED, and the application SHALL BE PROCESSED in accordance with this action and the Commission's rules and policies.

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 1.934 of the Commission's Rules, 47 C.F.R. § 1.934, that application FCC File No. 0003015041 SHALL BE DISMISSED.

assignment transaction, he does so at his own risk and without prejudice to any judicial relief that the Nevada courts may deem appropriate. *See PSCID Letter* at 2-3.

²⁴ For purposes of administrative efficiency, we direct the licensing staff to first process the cancellation application, and then, if that application is granted, to designate the license for Station WPTG843 as canceled and remove it from the assignment application via data correction prior to processing the assignment application.

²⁵ The cancellation application was filed manually, due to S M Leasing's inability to access the license electronically. *See Letter*, dated Jan. 16, 2008, from Dennis C. Brown, Esq., to FCC.

²⁶ *See note 2, supra.*

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 Richard R. Susainathan electronic access to the licenses of S M Leasing and Rental Ltd.

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

Scot Stone
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cc:

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