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

In the Matter of	)	
	)	
THOMAS K. KURIAN	)	FCC File No. 0002196859
Assignor	)	
	)	
AMTS CONSORTIUM LLC	)	
Assignee	)	
	)	
Application for Consent to Partial Assignment of	)	
the License for Station WQCP809	)	

ORDER

Adopted: April 20, 2009 **Released: April 21, 2009**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction*. We have before us two related petitions for reconsideration filed by AMTS Consortium LLC ("ACL").[1] The first petition seeks reconsideration of the grant of a request by Thomas K. Kurian ("Kurian") to withdraw the above-captioned application[2] for consent to partially assign the license for Automated Maritime Telecommunications System ("AMTS") Station WQCP809 to ACL.[3] The second petition seeks reconsideration of the dismissal of a notification of consummation submitted by ACL with respect to the same transaction.[4] For reasons discussed below, we deny both petitions.

2. *Background*. On June 14, 2005, Kurian and ACL filed the above-captioned application, seeking Commission consent for the partitioning to ACL of spectrum authorized to Station WQCP809 in Montana, New Mexico, and Wyoming, and parts of Arizona, Colorado, Idaho, Kansas, Minnesota, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Utah.[5] The Wireless Telecommunications Bureau's Mobility Division ("Division") consented to the application on April 7, 2006.[6] The Division subsequently granted two requests for an extension of time to consummate the

[1] ACL is now known as Environmentel LLC. *See*, *e.g.*, FCC File No. 0003649429 (filed Nov. 14, 2008).

[2] FCC File No. 0002196859 (filed June 14, 2005) ("Application").

[3] AMTS Consortium LLC, Petition for Reconsideration (filed Nov. 19, 2007) ("First Petition").

[4] AMTS Consortium LLC, Petition for Reconsideration (filed Nov. 23, 2007) ("Second Petition").

[5] The application was the subject of administrative litigation due to pleadings filed by Kurian's ex-wife, which were denied or dismissed. *See* Letter dated Apr. 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., *aff'd sub nom.* Thomas K. Kurian, *Order on Reconsideration*, 22 FCC Rcd 7318 (WTB MD 2007), *recon. dismissed*, *Order on Further Reconsideration*, 22 FCC Rcd 13223 (WTB MD 2007), *recon. dismissed*, *Second Order on Further Reconsideration*, 22 FCC Rcd 20970 (WTB MD 2007).

[6] On the same date, the Division consented to an application, filed by ACL while the WQCP809 application was pending, seeking Commission consent for the partitioning to Kurian of spectrum authorized to AMTS Station WQCP814 in Nevada and parts of Arizona and Utah. *See* FCC File No. 0002195997 (filed June 13, 2005). Generally, a proposed assignment of a license must be consummated within 180 days of public notice of the approval of the assignment application. *See* 47 C.F.R. § 1.948(d). With respect to the WQCP814 application, the Division has granted five requests for an extension of time to consummate. *See* FCC File Nos. 0002761512,

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approved transaction.[7]

3. On October 12, 2007, Kurian filed an FCC Form 603 requesting that the application be withdrawn. The Division processed the withdrawal request on October 18, 2007, and the application was consequently listed in the Commission's Universal Licensing System (ULS) database as "Withdrawn." Also on October 18, 2007, ACL submitted a notification of consummation for the application, representing that the partial assignment of the license for Station WQCP809 had been consummated on October 10, 2007.[8] ACL's notification of consummation was dismissed, however, because Kurian had withdrawn the application before the notification was submitted.[9]

4. *Discussion*. ACL makes largely the same arguments in both petitions. First, it asserts that it was error for the Division to process a withdrawal request filed by Kurian because ACL, the proposed assignee, is the only "applicant" with respect to the application, and therefore the only party that can request withdrawal.[10] ACL further argues that Kurian's withdrawal request should not have been processed because Kurian did not serve ACL with, or otherwise notify ACL of, the request,[11] which ACL contends was required because ACL was a party to the application.[12] In addition, ACL argues that the Division should not permit withdrawal of the application because the proposed transaction was consummated in fact prior to the filing of the withdrawal request, even though ACL's notification of consummation was filed after the withdrawal request.[13]

5. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.[14] The petitions do not demonstrate any error by the Division in processing the withdrawal request or in consequentially dismissing ACL's notification of consummation. We accordingly deny both Petitions. We conclude, moreover, that ACL's grievance over the withdrawal of the application is in the nature of a private contractual dispute of the sort that the Commission does not attempt to adjudicate,[15] and that ACL must instead seek redress from a court of competent jurisdiction.

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0003000375, 0003226662, 000341198, and 0003635790. As a result, the current consummation deadline is May 10, 2009.

[7] *See* FCC File Nos. 0002749571, 0002996562. As a result, the consummation deadline for the WQCP809 transaction was November 10, 2007.

[8] The notification of consummation was filed manually by letter (and via e-mail), and electronically as a "Pleading." *See* Letter dated Oct. 18, 2007, from Warren Havens, President, ACL, to Office of the Secretary, FCC. ACL was unable to file a notification of consummation electronically through the normal process because ULS does not accept notifications of consummation for assignment applications that are in "Withdrawn" status.

[9] *See* FCC File No. 0003205477, Auto Letter Ref. No. 4671670 (generated Nov. 23, 2007).

[10] *See* First Petition at 2-3; Second Petition at 3.

[11] *See* First Petition at 2; Second Petition at 3, 5.

[12] *See* First Petition at 2; *see also* Second Petition at 2, 4-5 (also arguing that the Division itself should have provided notice to ACL, in keeping with "FCC practice of notifying parties in [a] restricted adversarial proceeding of its decision").

[13] *See* First Petition at 3; Second Petition at 3.

[14] *See* WWIZ, Inc., *Memorandum Opinion and Order*, 37 F.C.C. 685, 686 ¶ 2 (1964), *aff'd sub. nom*. Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106.

[15] *See discussion infra* at para. 9.

6. ACL's assertion that only a proposed assignee may request withdrawal of an assignment application is incorrect.[16] An assignment application is not an application by the proposed assignee for the Commission to grant it the station license(s) proposed to be assigned, for the Commission has already granted the station license(s) at issue. Rather, an assignment application is an application by the proposed assignor for the Commission to consent to the proposed assignment of the rights granted by the station license(s).[17] For this reason, only the proposed assignor may request withdrawal of an assignment application.[18] We therefore reject ACL's argument that only ACL, and not Kurian, was entitled to request withdrawal of the application.

7. It follows from the conclusion that the proposed assignor is the only party with standing to request withdrawal of an assignment application that the proposed assignee is not a "party" to a withdrawal request such that the withdrawal must be served on the proposed assignee under the Commission's rules. ACL does not identify any rule requiring such service. The Commission's rules mandate service on opposing parties of certain pleadings and *ex parte* submissions.[19] They do not, however, require that a request to withdraw an assignment application be served on the proposed assignee.

8. It further follows that ACL's contention that the transaction had been consummated in advance of the filing of the withdrawal request likewise fails to provide a basis for reconsideration of the Division's actions. The Division's licensing staff is under no obligation to investigate whether a proposed transaction remains unconsummated before processing a request to withdraw an assignment application.[20] Upon the withdrawal of an approved assignment application, the participants no longer

[16] ACL argues that only the proposed assignee, and not the proposed assignor, should be deemed an "applicant" with respect to an application to assign a license. *See* Second Petition at 3. ACL bases its argument on Section 1.907 of the Commission's Rules, 47 C.F.R. § 1.907, which defines "Application" as "a request … for a station license." In the assignment of license context, according to ACL, only the proposed assignee is a party requesting a station license, and therefore the proposed assignee is the only applicant. *See* Second Petition at 3 n.3. In context, however, it is abundantly clear that the language cited by ACL is intended only to apply to an application for a new station license, inasmuch as the rule then discusses, in the disjunctive, modification applications, renewal applications, and, in a separate sentence, assignment and transfer of control applications. The second sentence in the Section 1.907 definition of an "Application" – "The term also encompasses requests to assign rights granted by the authorization or to transfer control of entities holding authorizations" – leaves no doubt that the language relied upon by ACL in the first sentence of the rule is not intended to apply to assignment applications.

[17] *See* 47 C.F.R. § 1.948(c) ("In the case of an assignment of authorization or transfer of control, the assignor must file an application for approval of the assignment on FCC Form 603.").

[18] *See* Wireless Telecommunications Bureau Announces Changes to the Universal Licensing System to Implement the Commission's Immediate Approval Procedures for Wireless License Assignments and Transfers, *Public Notice*, 20 FCC Rcd 13042, 13046 (WTB 2005) ("Withdrawals are submitted by the Assignor (for an assignment) and by the Transferor (for a transfer of control)."). A proposed assignee does not need to request withdrawal of an assignment application, for the Commission's licensing records are not modified to reflect the proposed assignee as the licensee until the proposed assignee files a notification of consummation; a proposed assignee that does not intend to implement a proposed assignment need only refrain from filing a notification of consummation, and the assignment application will be dismissed. *See*, *e.g.*, Wireless Telecommunications Bureau Reminds Applicants of End of Waiver Relief and Beginning of Automated Letters for Notifications of Consummation of Wireless License Assignment and Transfer of Control Applications, *Public Notice*, DA 05-689 (WTB rel. Apr. 6, 2005) ("If the FCC does not receive either a notification of consummation or a request for an extension of time to consummate on or before the consummation deadline, the application will be dismissed and a dismissal letter will be sent to the parties involved with the application.").

[19] *See, e.g.*, 47 C.F.R. §§ 1.47, 1.106(f)-(h), 1.115(f), 1.939(c), 1.1204(a)(10)(ii).

[20] ACL suggests that it filed its notice of consummation before the Division processed the withdrawal request, because "ACL did not see any grant of the Withdrawal Request when filing the Notice of Consummation on ULS." First Petition at 2 n.1; Second Petition at 4 n.5. We note, however, that processing actions taken during the business

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have Commission authority to consummate the proposed transaction.[21] It would therefore be illogical to accept and process notifications of consummation relating to a withdrawn assignment application, just as it would be to accept and process notifications of consummation relating to applications that have been dismissed due to some deficiency or rule violation. Accordingly, there was no error in processing the withdrawal request and dismissing the notice of consummation.[22]

9. We note that the gist of ACL's grievance appears to be that Kurian's withdrawal request constitutes a breach of a contract he entered into with ACL to swap spectrum.[23] The Commission has long held that it is not the proper forum for the resolution of private disputes such as this, and that claims for redress stemming from such disputes should be adjudicated by courts of competent jurisdiction.[24] Just as the Commission's consent to an assignment application does not immunize the parties from the legal consequences of consummation, such as those that may stem from violation of a court order or a breach of contract,[25] our processing of the withdrawal request likewise does not immunize any party from the

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day generally are not viewable until the public information on ULS is updated during the evening hours. *See* Wireless Telecommunications Bureau Announces Redesign of Universal Licensing System and Antenna Structure Registration Websites, *Public Notice*, 16 FCC Rcd 17181, 17182 (WTB 2001) ("The ULS data warehouse stores copies of the current, active version of a license as issued to the licensee and copies of the license as it appeared when previously issued. ULS tracks application data that is entered into the primary database each day; when a license is granted, the system populates the data warehouse with the new information and links the current version of the license to any copies already archived. The data warehouse is refreshed at 7:00 p.m. and then again late in the evening when all overnight batch processing in the primary database is completed.").

[21] The fact that ACL represented in the notification of consummation that the transaction actually had already consummated prior to the filing of the withdrawal request does not undermine our conclusion that the dismissal of the notification of consummation was not erroneous. ACL's representation that the proposed transaction was consummated prior to Kurian's filing of the Withdrawal Request does, however, raise several concerns with respect to Kurian's candor in filing the withdrawal request, and the possibility that ACL is engaging in unauthorized operation of facilities pursuant to the license for Station WQCP809, among other things. With the withdrawal of the application, the parties were divested of authority to consummate the proposed transaction, and ACL is not currently permitted to operate any facilities under authority of the license. Our decision herein is without prejudice to further Commission inquiry into these matters, and referral for enforcement action, if warranted.

[22] We find no support for ACL's argument that the letter informing it of the dismissal of its notification of consummation was unauthorized under Section 0.204 of the Commission's Rules because it was not signed. *See* First Petition at 5; Second Petition at 7; *see also* 47 C.F.R. § 0.204(c)(4) (orders and letters issued by any Commission official under delegated authority "are signed by the official who has given final approval of their contents"). We find nothing in the language of Section 0.204 that indicates that it confers any substantive rights on Commission regulatees to challenge a Commission order or letter, or contemplates that a Commission order or letter should be deemed invalid absent a signature. Nowhere in the rule can be found the words "must" or "shall," which strongly suggests that the rule is intended to be informational and/or precatory, rather than mandatory, and ACL has not cited, and we have not found, any case precedent that would undermine this conclusion. Even if we were to conclude otherwise, moreover, we do not believe the rule is intended to encompass ULS-generated letters that simply inform a party that a filing has been dismissed in accordance with routine Commission practice.

[23] *See* First Petition at 1-2, 4; Second Petition at 2-3, 5-6.

[24] *See, 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"); 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).

[25] *See*, *e.g.*, Wireless US, LLC, *Order*, 22 FCC Rcd 8643, 8647 ¶ 11 (WTB MD 2007).

legal consequences of such withdrawal. We accordingly take no position as to whether Kurian may be liable to ACL for breach of contract, but hold only that ACL's allegations to that effect, even if true, do not provide a basis for granting reconsideration of the Division's actions in this case.

10. *Conclusion*. We conclude that the two ACL petitions fail to demonstrate any material error or omission in the Division's processing of the withdrawal request or in its dismissal of ACL's subsequent notification of consummation. We also conclude that the matter before us is a private dispute between ACL and Kurian that should be resolved by a court of competent jurisdiction rather than the Commission.

11. 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 petitions for reconsideration filed by AMTS Consortium LLC on November 19 and 23, 2007 ARE DENIED.

12. 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
Deputy Chief, Mobility Division
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