

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

In the Matter)
TOUCH TEL CORPORATION) File No. 0004687226
Applications for Renewal of License for)
Broadband Radio Service Station WNTA626)

ORDER ON RECONSIDERATION

Adopted: December 7, 2011

Released: December 8, 2011

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

1. Introduction. In this Order on Reconsideration, we deny a petition for reconsideration filed by Warren C. Havens, Environmental, LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless, LLC, Verde Systems, LLC, Telesaurus Holdings GB, LLC, and V2G, LLC (Petitioners) filed a petition to deny the Renewal Application. Petitioners challenge our Order denying their petition to deny filed against Touch Tel Corporation's ("Touch Tel") above-captioned application to renew its license for Part 27 Broadband Radio Service Station WNTA626 ("Station").

2. Background. On April 12, 2011, Touch Tel timely filed an application to renew Station WNTA626.1 On April 20, 2011, the Renewal Application appeared on Public Notice as accepted for filing.2 On May 20, 2011, Petitioners asked the Wireless Telecommunications Bureau ("Bureau") to deny the renewal application for Station WTNA626.3 Petitioners alleged that Robert Cooper is the real-party-in-interest of both Touch Tel and Paging Systems, Inc. ("PSI"), that PSI lacks the character and fitness to be a Commission licensee, and thus Touch Tel, through its association with Robert Cooper, lacks the character and fitness to be a Commission licensee.4 On June 2, 2011, Touch Tel responded that the Petition to Deny must be dismissed because the petitioners lack standing.5 The Petition to Deny should also be dismissed, Touch Tel argued, because the Petitioners do not operate and provide Broadband Radio Services, they are not a "party in interest" under Section 1.939(a) of the Commission's Rules,6 and are not

1 File No. 0004687226 (filed Apr. 12, 2011) (Renewal Application).

2 Wireless Telecommunications Bureau Site-by-Site Accepted For Filing, Public Notice, Report Number 6774 (WTB rel. Apr. 20, 2011) at 3.

3 Petition to Deny to Dismiss, Petition to Deny, or in the Alternative Section 1.41 Request (filed May 20, 2011) (Petition to Deny) at 1.

4 Id. at 1 and 3.

5 Opposition to Petition to Deny, or in the Alternative, Section 1.41 Request (filed Jun. 2, 2011) (Opposition to Petition) at 2.

6 47 C.F.R. § 1.939(a).

aggrieved by the renewal of the licenses for Station WNTA626.⁷ It further argued that the Petition to Deny should be dismissed as a strike pleading.⁸

3. On July 12, 2011, the Broadband Division (Division) denied the Petition to Deny.⁹ It noted that “[m]ost of Petitioners’ arguments do not involve the instant application” and that the Commission had held that allegations relating to certain licenses held by PSI should not be raised in other proceedings involving PSI licenses.¹⁰ The *MO&O* then stated, “Because the instant case involves a license held by Touch Tel, we will not address arguments against PSI in this proceeding.”¹¹

4. Petitioners filed a petition for reconsideration on August 11, 2011.¹² They contend that the *MO&O* fails to comply with the requirement that the Commission issue a concise statement of the reasons¹³ for denying a petition to deny.¹⁴ In that regard, Petitioners argue that “the facts and arguments regarding PSI’s AMTS licenses were relevant to the Application and License.”¹⁵ Petitioners also allege that the Renewal Application failed to include a required public interest showing.¹⁶

5. *Discussion.* With one possible exception noted below, neither the Petition to Deny nor the Petition raise any allegations of misconduct or rule violations concerning the Station or the Renewal Application. Instead, Petitioners allege that PSI’s conduct with respect to licenses held by PSI is attributed to Touch Tel and thus demonstrates that Touch Tel lacks character and fitness to be a Commission licensee, and they incorporate by reference arguments they raised in other proceedings involving PSI licenses.

6. The Commission has held, however, that “Petitioners’ allegations regarding PSI’s character qualifications, which relate to other PSI licenses and are the subject of other pending proceedings, are more appropriately addressed elsewhere.”¹⁷ The Commission has affirmed that holding on reconsideration, stating: “Under long-standing Commission policy, unless the Commission makes an affirmative decision at that time to impose such restrictions generally on the licensee, the Commission will not encumber proceedings involving the licensee’s other licenses with consideration of the pending

⁷ Opposition to Petition at 2-5.

⁸ *Id.* at 8-10.

⁹ See Touch Tel Corporation, *Memorandum Opinion and Order*, 26 FCC Rcd 9636 (WTB BD 2011) (*MO&O*).

¹⁰ *Id.*, citing Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 454 ¶ 8 (2010).

¹¹ *MO&O*, 26 FCC Rcd at 9637 ¶ 3.

¹² Petition for Reconsideration, Warren C. Havens, Environmental, LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless, LLC, Verde Systems, LLC, Telesaurus Holdings GB, LLC, and V2G, LLC (filed Aug. 11, 2011) (Petition).

¹³ 47 U.S.C. § 309(d)(2).

¹⁴ Petition at 4-8.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 3.

¹⁷ Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 454 ¶ 8 (2010); see also Paging Systems, Inc., *Order on Reconsideration and Order*, 25 FCC Rcd 14620, 14621 n.14 (WTB MD 2010); Paging Systems, Inc., *Order on Reconsideration and Order*, 25 FCC Rcd 5762, 5763 ¶ 4 (WTB MD 2010), *recon pending*; Paging Systems, Inc., *Memorandum Opinion and Order*, 22 FCC Rcd 1294, 1299-1300 ¶ 9 (WTB BD 2007), *recon dismissed*, *Order on Reconsideration*, 23 FCC Rcd 7458 (WTB BD 2008), *review dismissed*, *Letter*, 24 FCC Rcd 13776 (WTB BD 2009), *recon. pending*.

character allegations made in the principal proceeding.”¹⁸ In this case, considering Petitioners’ allegations in the context of a Touch Tel license not involved in the alleged misconduct would be contrary to the Commission’s express directive. “Where the Commission has considered and spoken on an issue, its subordinates may not alter its decision.”¹⁹ We therefore decline to consider in the context of the Renewal Application, with the one exception noted below, Petitioners’ allegations.²⁰

7. We will consider and reject Petitioners’ argument that the Renewal Application failed to contain a sufficient public interest showing. Petitioners fail to specify what additional information Touch Tel should have provided. Touch Tel answered the questions on Form 601 and provided a complete showing to demonstrate that Station WNTA626 was providing substantial service, as required by Section 27.14(o) of the Commission’s Rules.²¹

8. 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 Reconsideration filed by Warren C. Havens, Environmental, LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless, LLC, Verde Systems, LLC, Telesaurus Holdings GB, LLC, and V2G, LLC on August 11, 2011 IS DENIED.

9. 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

John J. Schauble
Deputy Chief, Broadband Division
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¹⁸ Paging Systems, Inc., *et al.*, *Order on Reconsideration*, FCC 11-172 (rel. Nov. 29, 2011) at ¶ 7 (*PSI Recon Order*).

¹⁹ George E. Cameron Communications (KROQ), *et al.*, *Memorandum Opinion and Order*, Docket No. 20629, *et al.*, 93 FCC 2d 789, 816 ¶ 29 (1983) (*citing* Atlantic Broadcasting Co., *Memorandum Opinion and Order*, Docket No. 16706, 5 FCC 2d 717, 720 (1966)); *see also* *Amor Family Broadcasting Group v. FCC*, 918 F.2d 960, 962 (D.C.Cir.1990).

²⁰ We note that the Commission has “strongly caution[ed] Petitioners and their related companies not to file additional misdirected pleadings of this nature” raising allegations of misconduct not germane to the licenses in question. *See PSI Recon Order* at ¶ 2.

²¹ *See* 47 C.F.R. § 27.14(o). *See also* Guidance to Broadband Radio Service and Educational Broadband Service Licensees on Complying with Requirement to Provide Substantial Service by May 1, 2011, *Public Notice*, 26 FCC Rcd 2152 (WTB BD 2011).