

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)
)

SECOND ORDER ON RECONSIDERATION

Adopted: April 13, 2012

Released: April 16, 2012

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

1. *Introduction.* In this *Second Order on Reconsideration*, we deny a petition for reconsideration challenging the grant of the renewal of license of Broadband Radio Service (BRS) license WNTA626. The Petition raises one new argument that is clearly erroneous. We also remind petitioners that arguments concerning character qualifications that do not relate to the license for Station WNTA626 should not be raised in this proceeding.

2. *Background.* On April 12, 2011, Touch Tel Corporation (Touch Tel) timely filed an application to renew BRS Station WNTA626.¹ On April 20, 2011, the Renewal Application appeared on Public Notice as accepted for filing.² On May 20, 2011, Warren C. Havens, Environmental, LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless, LLC, Verde Systems, LLC, Telesaurus Holdings GB, LLC, and V2G, LLC (Petitioners) asked the Wireless Telecommunications Bureau (“Bureau”) to deny the renewal application for Station WNTA626.³ 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 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.

1.939(a) of the Commission's Rules,⁶ and are not 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 and directed the Division's licensing staff to process the renewal application for BRS Station WNTA626.⁹ 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. In their August 2011 Recon Petition, Petitioners contended that the *MO&O* failed to comply with the requirement that the Commission issue "a concise statement of the reasons"¹² for denying a petition to deny.¹³ In that regard, Petitioners argued that "the facts and arguments regarding PSI's AMTS licenses were relevant to the Application and License."¹⁴ Petitioners also alleged that the Renewal Application failed to include a required public interest showing.¹⁵

5. On December 8, 2011, the Division found that neither the Petition to Deny nor the August 2011 Recon Petition raised any allegations of misconduct or rule violations concerning the Station or the Renewal Application.¹⁶ The Division also considered and rejected Petitioners' argument that the Renewal Application failed to contain a sufficient public interest showing seeing that Petitioners failed to specify what additional information Touch Tel should have provided.¹⁷ Finally, the Division rejected Petitioners' allegation 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.¹⁸

⁶ 47 C.F.R. § 1.939(a).

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.* at 9637 ¶ 3, 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 47 U.S.C. § 309(d)(2).

¹³ 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) (August 2011 Recon Petition) at 4-8.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 3.

¹⁶ Touch Tel Corporation, *Order on Reconsideration*, 26 FCC Rcd 16488, 16489-90 ¶¶ 5-7 (WTB BD 2011) (*Order on Reconsideration*).

¹⁷ *Order on Reconsideration*, 26 FCC Rcd at 16490 ¶ 7. 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. 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).

¹⁸ *Order on Reconsideration*, 26 FCC Rcd at 16489-90 ¶¶ 5-6.

6. In its January 9 Petition for Reconsideration, Petitioners present photos from the Internet site Google Earth which allegedly show that the actual location of Touch Tel's transmitter site is inconsistent with the coordinates specified on the license for Station WNTA626.¹⁹ Petitioners also state that they have "certain new facts" about the "Touch Tel character and fitness issue...but intend to present them at a later date..."²⁰ In its Opposition to the instant petition, Touch Tel requests that the Bureau dismiss Petitioners' Petition for Reconsideration and argues that "the Google Earth information is irrelevant" because "for BRS licenses, the coordinates do not have to match up to the antenna site."²¹

7. *Discussion.* We reject Petitioners argument that the actual location of Touch Tel's transmitter site for Station WNTA626 is inconsistent with the coordinates specified on Touch Tel's license. We agree with Touch Tel that BRS licenses are "not site-based but market based."²² According to Section 27.1209(b) of the Commission's rules, as of January 10, 2005, the date of conversion from site-specific to market-based licenses for this service, "[t]he blanket license covers all fixed stations anywhere within the authorized service area..."²³ Furthermore, consistent with Section 27.1206(a)(1) of the Commission's rules and Touch Tel's argument in its opposition, Touch Tel's license coordinates are "merely used as a reference in which to measure the border of the 35 mile GSA [Geographical Service Area]."²⁴ Therefore, with certain limited exceptions not pertinent here, Touch Tel is free to operate anywhere within its 35 mile GSA without having to license specific antenna locations.²⁵ Furthermore, in the Renewal Application, Touch Tel made a substantial service showing explaining that the station was in operation and providing service. Petitioners have failed to rebut that showing. Accordingly, Petitioners have failed to make a *prima facie* showing of any rule violations involving Station WNTA626.

8. Petitioners also allege that they have "certain new facts" about the "Touch Tel character and fitness issue."²⁶ The Commission has held in a related context, however, that "Petitioners' allegations regarding [a licensee's] character qualifications, which relate to other . . . licenses and are the subject of other pending proceedings, are more appropriately addressed elsewhere."²⁷ The Commission has affirmed that holding on reconsideration, stating: "Under long-standing Commission policy, unless the

¹⁹ 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 Jan. 10, 2012) (Petition for Reconsideration) at 3-4, Ex. 1; Reply to Opposition to 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 at 1-3 (filed Feb. 3, 2012) (Reply to Opposition to Petition for Reconsideration).

²⁰ Petition for Reconsideration at 2, 4; Reply to Opposition to Petition for Reconsideration at 1, 5.

²¹ Opposition to Petition for Reconsideration, Touch Tel Corporation, (filed Jan. 19, 2012) at 2, 4 (Opposition).

²² Opposition at 4.

²³ 47 C.F.R. § 27.1209(b); Opposition at 4.

²⁴ 47 C.F.R. § 27.1206(a)(1); Opposition at 4.

²⁵ Opposition at 4.

²⁶ Petition for Reconsideration at 2, 4; Reply to Opposition to Petition for Reconsideration at 1, 5.

²⁷ 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*.

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 character allegations made in the principal proceeding."²⁸ 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."²⁹ We therefore decline to consider the unspecified "Touch Tel character and fitness issue" in the context of the Renewal Application.³⁰

9. 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 January 9, 2012 IS DENIED.

10. 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
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²⁸ Paging Systems, Inc., *et al.*, *Order on Reconsideration*, 26 FCC Rcd 16573, 16576 ¶ 7 (2011) (*PSI Recon Order*).

²⁹ 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).

³⁰ 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*, 26 FCC Rcd at 16574 ¶ 2.