

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

In the Matter)	
)	
PAGING SYSTEMS, INC.)	File Nos. 0004757182 and 0004800336
)	
Applications for Assignment of Authorization for Stations WQMF673 and WPSZ434)	
)	
DD INCORPORATED)	File No. 0004825560
)	
Application to Renew License for Station WPSZ434)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: June 4, 2012

Released: June 5, 2012

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

1. *Introduction.* This item addresses petitions filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings LLC, V2G LLC, and Skybridge Spectrum Foundation (Petitioners) seeking reconsideration of the grant of the applications of Paging Systems, Inc. (PSI) to assign the licenses for 800 MHz Specialized Mobile Radio Station WPSZ434 and Industrial/Business Pool Station WQMF673 to Crystal SMR, Inc. (Crystal),¹ and denial of the application of DD Incorporated (DD) to renew the license for Station WPSZ434.² For the reasons stated below, we deny the petitions.

2. *Background.* The applications to assign the licenses for Stations WQMF673³ and WPSZ434⁴ from PSI to Crystal were granted in June and July 2011, respectively.⁵ Petitioners filed petitions for

¹ Petition for Reconsideration (filed July 15, 2011) (WQMF673 Petition); Petition for Reconsideration (filed Aug. 19, 2011) (WPSZ434 Petition). PSI filed oppositions. Opposition to Petition for Reconsideration (filed July 28, 2011) (WQMF673 Opposition); Opposition to Petition for Reconsideration (filed Aug. 31, 2011) (WPSZ434 Opposition). Petitioners filed replies. Reply to Opposition to Petition for Reconsideration (filed Aug. 9, 2011); Reply to Opposition to Petition for Reconsideration (filed Sept. 13, 2011). PSI challenges Petitioners' standing in these proceedings. We need not resolve the standing dispute because, even if we accorded standing, for the reasons stated *infra* we would not find Petitioners' arguments persuasive. See Pamplin Broadcasting, Inc., *Memorandum Opinion and Order*, 23 FCC Rcd 2571, 2572 n.4 (2008).

² Petition to Dismiss, Petition to Deny, or in the alternative, Section 1.41 Request (filed Sept. 9, 2011) (WPSZ434 Renewal Petition). DD filed an opposition. Opposition to Petition to Dismiss, Petition to Deny, or in the alternative, Section 1.41 Request (filed Sept. 19, 2011) (DD Opposition). Petitioners filed a reply. Reply to Opposition to Petition to Dismiss, Petition to Deny, or in the alternative, Section 1.41 Request (filed Oct. 4, 2011).

³ FCC File No. 0004757182.

⁴ FCC File No. 0004800336.

⁵ Petitioners argue that pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, and Section 1.933 of the Commission Rules, 47 C.F.R. § 1.933, the application to assign the license for Station WPSZ434 should have gone on public notice prior to grant. See WPSZ434 Petition at 1; WPSZ434 Renewal Petition at 7. We disagree. Certain categories of license assignments and transfers of control involving Wireless Radio Services are subject to the Commission's immediate approval procedures that eliminate the public notice requirement. See Promoting

(continued...)

reconsideration of the grants in July and August. Crystal assigned the license for Station WPSZ434 to DD,⁶ which filed an application to renew the license in August.⁷ Petitioners filed a petition to dismiss or deny the renewal application in September.

3. Petitioners assert that satellite images of the authorized locations show the licensed coordinates to be vacant land or paved roadways, which demonstrates that the stations were not constructed so the licenses automatically terminated and thus cannot be assigned or renewed.⁸ Petitioners also argue, based on claims they raised with respect to other PSI licenses, that PSI lacks the character and fitness to be a Commission licensee, and that those claims should be resolved prior to acting on the assignment applications.⁹

4. PSI and DD respond that the stations were properly constructed, but the location information listed on the licenses is less precise than the information that can be provided by more recent technology.¹⁰ PSI states that the discrepancies between the licensed and actual locations are between 23 and 202 feet, and indicates that the licensing information will be corrected.¹¹ PSI also argues that Petitioners' claims regarding PSI's character should be resolved in the first instance in the proceedings regarding the licenses to which they pertain rather than in a subsequent proceeding involving other licenses.¹²

5. *Discussion.* Based on the information before us, we conclude that Stations WPSZ434 and

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Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, 19 FCC Rcd 17503, 17504 ¶ 101 (2004); 47 C.F.R. § 1.948(j)(2).

⁶ See FCC File No. 0004816640.

⁷ FCC File No. 0004825560.

⁸ See WQMF673 Petition at 2, 4; WPSZ434 Petition at 4; WPSZ434 Renewal Petition at 4-5.

⁹ See WQMF673 Petition at 1-2; WPSZ434 Petition at 3; WPSZ434 Renewal Petition at 4. Petitioners seek to incorporate their pleadings in these other proceedings by reference. See WQMF673 Petition at 11-19; WPSZ434 Petition at 2-4; WPSZ434 Renewal Petition at 2-3.

¹⁰ See WPSZ434 Opposition at 6-7; DD Opposition at 4. Because there was a small (0.052 miles) discrepancy between the coordinates identified by PSI and the coordinates identified by DD for Station WPSZ434's Grizzly Peak site, the Wireless Telecommunications Bureau's Mobility Division (Division) asked them to provide additional information concerning the construction and operational status of Stations WPSZ434 and WQMF673. See Letter dated Feb. 27, 2012, from Scot Stone, Deputy Chief, Wireless Telecommunications Bureau, Mobility Division to Audrey P. Rasmussen, Esq., Counsel to PSI; Letter dated Feb. 27, 2012, from Scot Stone, Deputy Chief, Wireless Telecommunications Bureau, Mobility Division to Dennis C. Brown, Esq., Counsel to DD Incorporated. In response, the parties provided additional documentary and photographic evidence regarding the stations, and DD explained that it received the discrepant coordinates from a third party, rather than from independent measurements that disagreed with PSI's measurements. See Letters dated March 28, 2012, March 29, and March 30, 2012, from Dennis C. Brown, Esq., Counsel to DD Incorporated to Stana Kimball, Wireless Telecommunications Bureau, Mobility Division. Petitioners requested that we accept replies to the responses by PSI and DD. See Reply to Responses to Section 308 Letters (filed May 11, 2012); Request to Accept Reply to Responses to Section 308 Letters (filed May 11, 2012). PSI filed an opposition. Opposition to Request to Accept Reply to Responses to FCC Letters (filed May 17, 2012). Petitioners argue that PSI and DD failed to provide satisfactory and properly substantiated responses to the Commission request for additional information. We disagree. Petitioners' arguments are speculation and conjecture about how the submitted responses could be incorrect, falsified, or actually mean something completely different. Petitioners offer no evidence to substantiate these claims.

¹¹ See Declaration attached to WQMF673 Opposition.

¹² WQMF673 Opposition at 7; WPSZ434 Opposition at 5.

WQMF673 were constructed and are operating as authorized. Petitioners' assertion that the satellite images demonstrate that the stations were not properly constructed is meritless. The images, with antenna structures visible near the licensed coordinates, actually support the licensees' representations that the stations were constructed at locations within a reasonable margin of error for determining geographic coordinates using older technology. Occasional minor discrepancies in license coordinates due to the employment of later technology that yields more accurate results are not unprecedented,¹³ and are not grounds for concluding that an authorization terminated due to failure to construct where there is no evidence that the licensee knowingly constructed the facility somewhere other than the licensed coordinates.¹⁴ We remind PSI and DD, however, that licensees must promptly correct any discovered discrepancy.¹⁵

6. Most Petitioners' other arguments do not involve the instant licenses, but instead allege misconduct with respect to other PSI licenses. The Commission has held that Petitioners' allegations against PSI's character qualifications that relate to its other licenses and are not the subject of the proceeding at issue are more appropriately addressed elsewhere.¹⁶ Therefore, we will not address Petitioners' arguments concerning PSI's other licenses in this proceeding.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petitions for reconsideration filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings LLC, Skybridge Spectrum Foundation on July 15 and August 19, 2011, ARE DENIED.

8. IT IS FURTHER ORDERED that, 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 Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the petition to deny filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings LLC, Skybridge Spectrum Foundation on September 9, 2011, IS DENIED, and application FCC File No. 0004825560 SHALL BE PROCESSED in accordance with this *Order on Reconsideration and Order*.

9. These actions are 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
Wireless Telecommunications Bureau

¹³ See, e.g., North Country Repeaters, *Forfeiture Order*, 19 FCC Rcd 22139, 22140-42 ¶¶ 4-8 (EB 2004).

¹⁴ See, e.g., KM Radio of St. Johns, L.L.C., *Memorandum Opinion and Order and Notice of Apparent Liability*, 19 FCC Rcd 5847, 5850-51 ¶ 9 (2004); David E. Huffman, *Memorandum Opinion and Order*, DA 99-2022, ¶¶ 3-9 (WTB rel. Oct. 1, 1999).

¹⁵ DD already has filed an application to modify the license for Station WPSZ434 to revise the coordinates. FCC File No. 0005169245.

¹⁶ See Paging Systems, Inc., *Order on Reconsideration*, 26 FCC Rcd 16573, 16576-78 ¶¶ 7-9 (2011); see also, e.g., Touch Tel Corporation, *Second Order on Reconsideration*, DA 12-595, ¶ 8 (WTB MD rel. Apr. 16, 2012).