

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

In the Matter of Application of)	
)	
THOMAS K. KURIAN)	File No. 0005982114
)	
For Partitioning of License for Automated)	
Telecommunications System Station WQCP809 to)	
NorthWestern Corporation)	

ORDER

Adopted: April 15, 2014

Released: April 16, 2014

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

1. *Introduction.* This *Order* addresses a petition filed by Warren Havens (Havens), Environmental LLC (Environmental), Environmental-2 LLC (Environmental-2), Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, V2G LLC, and Skybridge Spectrum Foundation (collectively Petitioners) to deny the above-captioned application to assign part of the license for Automated Maritime Telecommunications System (AMTS) Station WQCP809 from Thomas K. Kurian (Kurian) to NorthWestern Corporation (NorthWestern).¹ For the reasons set forth below, we deny the petition and will process the application.

2. *Background.* The AMTS service originally was intended to provide public correspondence service to tugs, barges, and other commercial vessels.² AMTS stations are now licensed on a geographic basis,³ and are permitted to provide service to units on land subject to certain conditions,⁴

¹ Petition to Deny, Petition to Dismiss, and Section 1.41 Request, filed Nov. 20, 2013 (Petition). NorthWestern filed an opposition. Opposition to Petition to Deny, filed Dec. 4, 2013 (NorthWestern Opposition). Kurian filed an opposition. Opposition to Petition to Deny, filed Dec. 5, 2013 (Kurian Opposition). Petitioners filed a supplement. Supplement to Petition to Deny, Petition to Dismiss, and Section 1.41 Request And Request for Leave to File Supplement, filed Dec. 7, 2013 (Supplement). NorthWestern filed an opposition to the supplement. Opposition to Supplement to Petition to Deny, Petition to Dismiss, and Section 1.41 Request And Request for Leave to File Supplement, filed Dec. 26, 2013 (Opposition to Supplement). Petitioners filed a reply. Reply to Oppositions to Petition to Deny, Petition to Dismiss, and Section 1.41 Request, filed Dec. 23, 2013 (Reply).

² See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 F.C.C. 2d 875, *on reconsideration*, *Memorandum Opinion and Order*, 88 F.C.C. 2d 678 (1981), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

³ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002), *on recon.*, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003); *see also* 47 C.F.R. § 80.385. Incumbent site-based stations are grandfathered.

⁴ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965-66 ¶¶ 24-26 (1997), *recon. denied*, *Third Report and Order and Third Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998); *see also* 47 C.F.R. § 80.123.

on either a commercial mobile radio service (CMRS) or private mobile radio service (PMRS) basis.⁵ If an AMTS licensee wishes to offer PMRS in lieu of, or in addition to, CMRS, the licensee must “overcome the presumption that ... AMTS Stations are commercial mobile radio services.”⁶ In order to do so, the licensee must submit a certification that sufficiently describes the proposed service to demonstrate that it is not CMRS.⁷

3. On October 28, 2013, Kurian filed an application to partition portions of the license for Station WQCP809 to NorthWestern.⁸ The application was filed with a Section 20.9(b) certification. It was placed on a public notice with a 14-day comment period on November 6, 2013.⁹

4. Petitioners filed their petition on November 20, 2013. They state that the application was incorrectly put on 14-day instead of 30-day public notice, as Section 20.9(b)(2) gives interested parties 30 days to file a petition to deny an application containing a Section 20.9(b) certification.¹⁰ They further state that the certification does not sufficiently describe what portion of the spectrum will be used for PMRS, and what will remain as CMRS.¹¹ Petitioners also argue that NorthWestern’s ownership statement is incomplete because it only discloses one person holding an interest of 0.21% in the company.¹² They also claim that there is conflicting information in the application, where NorthWestern is listed as an assignee, but the attached certification and public interest statement refer instead to Northwestern Energy.¹³ Finally, Petitioners present information regarding litigation in the District Court of Clark County, Nevada, between Environmental LLC, Environmental-2, and Havens on one side, and Kurian on the other side, concerning a contractual dispute over the license for Station WQCP809.¹⁴

5. *Discussion. Public Notice.* Section 20.9(b)(1) requires the Commission to place on public notice “[a]ny application requesting to use any Personal Communications Service, VHF Public

⁵ See MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, 22 FCC Rcd 8971, 8976-78 ¶¶ 8-10 (2007), *recon. granted in part, Memorandum Opinion and Order*, 25 FCC Rcd 533 (2010); see also 47 C.F.R. §§ 20.9, 80.475(c).

⁶ See 47 C.F.R. § 20.9(b); see also 47 C.F.R. § 20.9(a), (a)(5).

⁷ See 47 C.F.R. § 20.9(b)(1).

⁸ See File No. 0005982114.

⁹ See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, and *De Facto* Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted For Filing, *Public Notice*, Report No. 9117 (WTB rel. Nov. 6, 2013) (*Public Notice*). The application was prematurely consented to on November 22, 2013, then returned to pending status on December 3, 2013. See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 9164 (WTB rel. Nov. 27, 2013); Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 9203 (WTB rel. Dec. 11, 2013).

¹⁰ See Petition at 7.

¹¹ See *id.* at 7-8.

¹² See *id.* at 9.

¹³ See *id.* at 10.

¹⁴ See *id.* at 3; Supplement at 2.

Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis.”¹⁵ In compliance with this requirement, the Commission placed the instant application on public notice on November 6, 2013.¹⁶ Section 20.9(b)(2) gives interested parties 30 days to file a petition to deny an application containing a Section 20.9(b) certification.¹⁷ Petitioners availed themselves of this right by filing their Petition to deny the instant application on November 20, 2013. While the public notice erroneously listed the instant application in the 14-day public notice section, this error did not prejudice Petitioners or any other interested party. It therefore provides no reason to deny the application.

6. Section 20.9(b) Certification. Section 20.9(b)(1) requires a certification to include “a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in §20.3.”¹⁸ The certification attached to the instant application specifically states that the proposed service will be used on “a non-common carrier, private internal basis to support electric utility operations consistent with the FCC’s definition of ‘Private Mobile Radio Service’ (‘PMRS’) in Section 20.3 of the rules not on a commercial mobile radio service basis.”¹⁹ The information in the certification clearly and sufficiently describes the intended non-commercial, private use of the entire assigned spectrum by an electric utility company, and we reject Petitioners’ attempt to find it unclear. We also do not put any weight on Petitioner’s perceived conflict between the application and certification due to the use of “North Western Corporation” on the former, and “Northwestern Energy” on the latter, as NorthWestern is “doing business as” Northwestern Energy.²⁰

7. Ownership Disclosure. Corporations must disclose the name of any party holding at least ten percent of their stock.²¹ Petitioners assert that the NorthWestern’s Form 602 is deficient because it discloses only the name of one officer and director with a minority interest of .21%, and does not list other officers and directors of the company.²² Petitioners do not, however, identify any party that owns more than ten percent of NorthWestern’s stock, whose interests would have to be disclosed. As NorthWestern explains in its Opposition, it is “a publicly traded company with a common stock offering . . . [with] no persons and entities holding 10% or greater interest . . .,” and the one director was listed “out of an abundance of caution.”²³ Petitioners have not demonstrated that NorthWestern’s ownership disclosure is defective.

8. Litigation. In June 2005, Kurian filed an application to assign the license for Station WQCP809 to Environmental (at that time known as AMTS Consortium, LLC). The Wireless Telecommunications Bureau (Bureau) consented to the application, but on October 12, 2007, Kurian filed a request to withdraw his assignment application. The Bureau’s Mobility Division (Division) processed his request on October 18, 2007. Environmental electronically filed a notification of consummation on the same day, listing October 10, 2007 as the date when the consummation occurred. The Division dismissed Environmental’s notification, as it had already granted Kurian’s request to withdraw the assignment application, and, therefore, there was no assignment to consummate. Environmental sought reconsideration of the Division’s decisions to grant Kurian’s request to withdraw the assignment

¹⁵ 47 C.F.R. § 20.9(b)(1).

¹⁶ See *Public Notice*, *supra* note 9.

¹⁷ 47 C.F.R. § 20.9(b)(2).

¹⁸ 47 C.F.R. § 20.9(b)(1).

¹⁹ See File No. 0005982114, Attachment.

²⁰ See NorthWestern Opposition at 2, 7.

²¹ 47 C.F.R. §§ 1.919(a), 1.2112(a)(2).

²² See Petition at 9-10.

²³ NorthWestern Opposition at 6.

application and dismiss Environmental's notification of consummation. The Division denied both petitions, concluding that Environmental's claims were private contractual disputes that should be pursued in a court of competent jurisdiction, and not adjudicated by the Commission.²⁴ The decision was affirmed on review²⁵ and appeal.²⁶

9. This dispute is now the subject of a lawsuit filed by Petitioners against Kurian in Nevada state court. We reiterate that the Commission has a long-standing policy not to interfere in private contractual matters, but would accommodate court decrees that are final, unless it is in the public interest to do otherwise.²⁷ The Commission has not been presented with any final court order holding that Petitioners are entitled to claim any interest in the subject license. Consequently, the pending litigation presents no basis for denying the instant application. Kurian and NorthWestern may consummate the assignment at their own risk that Petitioners will prevail in the state court litigation.²⁸

10. *Conclusion and Ordering Clauses.* Petitioners have not demonstrated that the instant application should be denied. The Section 20.9(b) certification sufficiently describes the NorthWestern's proposed PMRS operations to demonstrate that such operations will not be within the definition of CMRS, and the application contains no other errors.

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to deny filed by Warren Havens, Environmental LLC, Environmental-2 LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, V2G LLC, and Skybridge Spectrum Foundation on November 20, 2013 IS DENIED, and application FCC File No. 0005982114 filed on October 28, 2013 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

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
Wireless Telecommunications Bureau

²⁴ See Thomas K. Kurian, *Order*, 24 FCC Rcd 4849 (WTB MD 2009).

²⁵ See Thomas K. Kurian, *Memorandum of Opinion and Order*, 25 FCC Rcd 13863 (2010).

²⁶ See *Environmental, LLC v. F.C.C.*, 661 F.3d 80 (D.C. Cir. 2011).

²⁷ 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").

²⁸ See, e.g., *Spanish International Communications Corporation*, *Memorandum Opinion and Order*, 3 FCC Rcd 4319, 4321 ¶ 11 (1988) ("[W]e emphasize that the Bureau's grant of a transfer or assignment amounts only to consent to the specific transaction proposed. In the absence of the issuance of a stay or injunction by a tribunal with proper jurisdiction, the parties to such applications are free to consummate the transaction at their own risk where matters are pending in other forums which may ultimately result in an unfavorable outcome for them.").