

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)
Maritime Telecommunications System Station)
WQCP809 to NorthWestern Corporation)

ORDER ON RECONSIDERATION

Adopted: January 9, 2015

Released: January 13, 2015

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

1. *Introduction.* In this *Order on Reconsideration*, we deny a petition filed by Warren Havens, Environmental LLC (Environmental), Environmental-2 LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, V2G LLC, and Skybridge Spectrum Foundation (collectively Petitioners) seeking reconsideration of an *Order*¹ denying Petitioners’ petition 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).²

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

¹ Thomas K. Kurian, *Order*, 29 FCC Rcd 3825 (WTB MD 2014) (*Order*).

² Petition for Reconsideration (filed May 16, 2014) (PFR). Kurian filed an opposition and a supplement to the opposition. Opposition to Petition for Reconsideration (filed May 23, 2014); Supplement to the Opposition to Petition for Reconsideration (filed May 23, 2014). NorthWestern filed an opposition. Opposition to Petition for Reconsideration (filed May 29, 2014). Petitioners filed a reply. Reply to Oppositions to Petition for Reconsideration (filed June 10, 2014).

³ 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).

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.

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).

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, and placed on a public notice with a 14-day comment period on November 6, 2013.⁹

4. In their petition to deny the application filed on November 20, 2013, Petitioners raised several issues, including the placement of the application on 14-day public notice instead of the 30-day public notice required for applications containing a Section 20.9(b) certification, and the sufficiency of the certification’s description of the proposed service and NorthWestern’s ownership statement. Petitioners also noted litigation between them and Kurian regarding to an application to assign the license for Station WQCP809 to Environmental’s predecessor-in-interest that Kurian ultimately withdrew.

5. In its April 16, 2014 *Order* denying the petition, the Wireless Telecommunications Bureau’s Mobility Division (Division) acknowledged the error regarding the public notice, but concluded that it did not prejudice Petitioners or any other interested party.¹⁰ The Division also found that the certification sufficiently described the proposed use of the assigned spectrum,¹¹ and that NorthWestern disclosed all the ownership information that was required.¹² Because there had been no final court order holding that Petitioners are entitled to an interest in the license, the Division concluded that the pending litigation presented no basis for denying the instant application, but warned Kurian and NorthWestern that consummation of the assignment would be at their own risk of Petitioners prevailing in the litigation.¹³

6. *Discussion.* In their petition for reconsideration of the *Order*, Petitioners assert that the Division improperly relied on factual assertions in NorthWestern’s opposition that were not supported by an affidavit, as required by Section 1.939(f) of the Commission’s Rules.¹⁴ We note, however, that the

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 Licensee 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 Licensee 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 Licensee 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 *Order*, 29 FCC Rcd at 3827 ¶ 5.

¹¹ See *id.* at 3827 ¶ 6.

¹² See *id.* at 3827 ¶ 7.

¹³ See *id.* at 3828 ¶ 9.

¹⁴ See PFR at 2-3, 4; see also 47 C.F.R. § 1.939(f) (“The applicant and any other interested party may file an opposition to any petition to deny . . . in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.”).

only factual assertions for which the Division cited the opposition were that NorthWestern was “doing business as” Northwestern Energy, and that NorthWestern is a publicly traded company of which no person holds more than ten percent of the common stock.¹⁵ This information is available in other public records, such as prior NorthWestern filings with the Commission and the Securities and Exchange Commission. Thus, the Division did not rely on any unsupported factual assertions.¹⁶

7. Petitioners reiterate their arguments concerning the placement of the application on 14-day public notice, and the sufficiency of NorthWestern’s description of the proposed service.¹⁷ With respect to the public notice, Petitioners still offer no explanation of how they were prejudiced by the erroneous announcement of the public notice period, given that they fully availed themselves of their right to file a petition to deny and their arguments were thoroughly considered; or what would be changed by their proposed solution of putting the application back on public notice for an additional thirty days.¹⁸ Regarding the description of the proposed service, we again reject Petitioners’ attempt to find the certification to be unclear. In particular, we do not find NorthWestern’s use of the word “station” to refer to the assigned spectrum to be ambiguous or confusing.¹⁹

8. Petitioners also note litigation brought by Environmental’s predecessor-in-interest against Kurian’s former wife, in which she was found to have violated the court’s orders.²⁰ Petitioners argue that this constitutes grounds to reconsider the Division’s consent to the assignment of part of the license for Station WQCP809 from Kurian to NorthWestern. We conclude, however, that a sanction against another person, in litigation to which Kurian was not then a party, involving other licenses, is not relevant to the matter at hand.

9. Finally, Petitioners suggest that the Division has applied the Commission’s rules differently to them from how it applies the rules to other parties, in violation of Petitioners’ statutory and

¹⁵ See *Order*, 29 FCC Rcd at 3827 nn. 20, 23.

¹⁶ See *RegioNet Wireless License, LLC, Memorandum Opinion and Order*, 17 FCC Rcd 21263, 21265-66 ¶ 7 (2002) (concluding that opposition’s lack of an affidavit was not grounds to reverse denial of petition where the Division did not rely on the opposition and instead evaluated and rejected the petition’s arguments on their own merits *vel non*).

¹⁷ See PFR at 3-4.

¹⁸ See *id.*

¹⁹ NorthWestern’s certification provided as follows:

Pursuant to Section 20.9(b) of the Commission’s rules, Northwestern Energy (“NWE”) hereby certifies that it will operate the station acquired from the proposed partition (the “Station”) 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 and not on a commercial mobile radio service basis.

NWE provides electricity and natural gas to more than 600,000 customers in Montana, South Dakota and Nebraska. The Station will be used to promote safe and effective electric and natural gas distribution and transmission operations throughout Montana and a portion of Wyoming. The Station will, without limitation, be used to provide fixed-wireless radio services used for critical Supervisory Control and Data Acquisition (“SCADA”) applications. The SCADA system will provide increased functionality with respect to polling and collecting information from electric utility infrastructure at various locations throughout the licensed service area. NWE’s communications facilities and services will not be available to a substantial portion of the public and will not be the functional equivalent of services made available in such a manner.

FCC File No. 0005982114, Section 20.9(b) Certification of Non-CMRS, at 1 (footnote omitted).

²⁰ See PFR at 1-2.

constitutional rights.²¹ We note that the Commission has rejected Petitioners' claims of bias.²²

10. *Conclusion and Ordering Clauses.* Petitioners have not demonstrated that the Division's actions contained any errors, and we find none. We therefore deny the petition for reconsideration of the *Order*.

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 Petition for Reconsideration filed by Warren Havens, Environmental LLC, Environmental-2 LLC, Skybridge Spectrum Foundation, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and V2G LLC on May 16, 2014 IS 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
Wireless Telecommunications Bureau

²¹ See *id.* at 4.

²² See, e.g., Mobex Network Services, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 3390, 3395-96 ¶ 11 (2010), *recon. pending*.