



Federal Communications Commission  
Washington, D.C. 20554

October 14, 2016

**DA 16-1182**

Suzanne S. Goodwyn, Esq.  
Law Office of Suzanne S. Goodwyn  
1234 Tottenham Court  
Reston, VA 20194

Dear Ms. Goodwyn:

On July 11, 2016, the Shekinah Network (“Shekinah”) filed a petition for reconsideration<sup>1</sup> asking the Wireless Telecommunications Bureau to reconsider its decision<sup>2</sup> to deny Shekinah’s motion for declaratory ruling.<sup>3</sup> For the reasons stated below, we dismiss the Petition in part and deny it in part.<sup>4</sup> We also deny a motion to strike filed Des Moines F MSPG Partnership (Partnership) seeking to strike Shekinah’s reply pleading.<sup>5</sup>

In its Motion, Shekinah Network asked the Commission to use its authority under Section 1.2 of the Commission’s rules to clarify whether the ITFS Air Time Lease Agreement (Lease) between Shekinah Network and the Partnership for the use of the excess capacity of EBS Station WND401 in Des Moines, Iowa can continue.<sup>6</sup> The Broadband Division denied Shekinah’s Motion because it found that the Commission was not the correct forum for the relief sought, because a determinant contractual term, the start date of the lease at issue, should be decided in another forum.<sup>7</sup>

In its Petition, Shekinah argues that there is no dispute regarding the start date and that the Commission should rule as to whether Shekinah is obliged to continue leasing its spectrum.<sup>8</sup> To support its argument, Shekinah attaches information that it believes supports its position.<sup>9</sup>

---

<sup>1</sup> Petition for Reconsideration, Shekinah Network (filed July 11, 2016) (Petition).

<sup>2</sup> Letter to Suzanne S. Goodwyn, Esq., 31 FCC Rcd 6831 (WTB BD 2016) (Letter Order).

<sup>3</sup> Shekinah Network, Motion for Declaratory Ruling (filed Oct. 28, 2015) (Motion).

<sup>4</sup> Des Moines F MSPG Partnership (“Partnership”) filed its opposition on July 20, 2016. Des Moines F MSPG Partnership, Opposition to Petition for Reconsideration and Request for Summary Dismissal (filed July 20, 2016) (Opposition). Shekinah replied to the Opposition. Shekinah Network, Reply to Opposition for Reconsideration (filed July 25, 2016) (Reply).

<sup>5</sup> The Partnership’s Motion to Strike does not identify any specific procedural deficiency in Shekinah’s reply pleading. Instead, the Partnership repeats arguments made in its opposition. Under those circumstances, we will deny the Motion to Strike and not give any further consideration to the substantive arguments made in the Motion to Strike or Shekinah’s response.

<sup>6</sup> Motion at 1.

<sup>7</sup> Letter Order.

<sup>8</sup> Petition at 4.

<sup>9</sup> Petition at 2, Reply at 2. Because the information in question was submitted confidentially, we do not discuss the nature of the information in this letter.

None of the information provided by Shekinah establishes that there is no dispute as to the start date. The Partnership explicitly disagrees with Shekinah's representations concerning the start date.<sup>10</sup> Furthermore, based upon our review of the lease, Shekinah's arguments do not address all of the conditions that needed to be met before the lease was in effect. We emphasize, however, that we are not finding that Shekinah's interpretation of the contract or the lease start date are incorrect. Rather, consistent with long-established Commission policy, we rule that the Commission is not the correct forum for resolving those contractual issues.<sup>11</sup> The information Shekinah provides appears to be relevant to making a determination regarding the start date. It is not the Commission's job to make that determination.

Shekinah cites *AirTouch Paging* for the proposition that the Commission may decide matters related to licensing, even if such a decision would affect litigation relating to contractual obligations in another forum.<sup>12</sup> But the instant dispute has the opposite relationship between the contractual dispute and the licensing issue; whether or not the lease can be renewed is a function of its start date, not the other way around. Shekinah is also incorrect when it argues that only the Commission has authority to determine whether the leasing of spectrum can continue.<sup>13</sup> As noted in the Letter Order, "any agreement entered into between January 24, 1999 and January 9, 2005 that provided for the spectrum leasing to commence at a point following execution of the document will be grandfathered for up to 15 years from the spectrum leasing start date agreed to by the parties in the agreement."<sup>14</sup> Once a finder of fact with appropriate jurisdiction (whether that finder is an arbitrator, as urged by the Partnership, or a court of competent jurisdiction) determines the start date of the lease, it will be a simple matter for the finder of fact to apply that established Commission policy to determine whether leasing can continue.

It is axiomatic that reconsideration will not be granted for the purpose of debating matters on which the Commission has deliberated and spoken.<sup>15</sup> In the Letter Order, we considered and rejected Shekinah's request for a declaratory ruling. Moreover, to the extent that Shekinah introduces new facts or arguments not previously presented to the Commission, we find that these facts and arguments could have been presented earlier but were not, and are therefore subject to dismissal under Sections 1.106(b)(2) of the rules.<sup>16</sup> Therefore, we dismiss the Petition to the extent that it relies upon impermissible facts and arguments.

For the reasons stated above, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's rules, 47 CFR § 1.106,

---

<sup>10</sup> Opposition at 2 n.3.

<sup>11</sup> *S.A. Dawson*, Memorandum Opinion and Order, 17 FCC Rcd 472, 474 n.15 (WTB 2002) citing *AirTouch Paging, Inc.*, Order, 14 FCC Rcd 9658 (WTB CWB P&RB 1999) ("*AirTouch Paging*"); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987). See also *Rudolph J. Geist, Esq.*, Letter, 29 FCC Rcd 15282 (WTB BD 2014); *Antilles Wireless, L.L.C. d/b/a USA Digital*, Order on Reconsideration, 24 FCC Rcd 4696, 4699 ¶ 8 (WTB 2009).

<sup>12</sup> Petition at 3, citing *AirTouch Paging*.

<sup>13</sup> Petition at 4.

<sup>14</sup> Letter Order at 2, quoting *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking, 24 FCC Rcd 12258, 12263 para. 13 (2009).

<sup>15</sup> See, e.g., *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

<sup>16</sup> 47 CFR § 1.106(b)(2).

that the Petition for Reconsideration filed by the Shekinah Network on July 11, 2016 IS DISMISSED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.45(c) of the Commission's rules, 47 CFR § 1.45(c), that the Motion to Strike or Dismiss filed by Des Moines F MPSG Partnership on July 29, 2016 IS DENIED.

These action 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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

cc: Steven A Lancelotta, Esq.  
Butzel Long P.C.  
1747 Pennsylvania Avenue, NW  
Washington DC 20006