

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

In the Matter of	)	
	)	
JOSE FRANCIS	)	File No. 0000795756
	)	
Petition for Reconsideration of License Grant for	)	
Station WPUR492, Pleasant Peak, California	)	
	)	
and	)	
	)	
MATHEWS THOMAS	)	File No. 0000796262
	)	
Petition for Reconsideration of License Grant for	)	
Station WPUT210, Pleasant Peak, California	)	

**ORDER ON RECONSIDERATION**

**Adopted: October 23, 2002**

**Released: October 24, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On April 18, 2002, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) granted Jose Francis (Francis) a license for Industrial/Business (I/B) Radio Pool Station WPUR492, Pleasant Peak, California. On April 26, 2002, the Branch granted Mathews Thomas (Thomas) a license for trunked I/B Station WPUT210, Pleasant Peak, California. On May 20 and May 28, 2002, Ted S. Henry (Henry) filed separate petitions seeking reconsideration of the grants.<sup>1</sup> For the reasons listed below, we deny both petitions.

**II. BACKGROUND**

2. On November 7, 2000, the Branch granted Francis a license for trunked 450-512 MHz band I/B Station WPRL297, Apex Peak, Nevada. On April 5, 2001, Francis assigned the license to RF

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<sup>1</sup> See Petition for Reconsideration filed May 20, 2002 by Counsel for Ted S. Henry regarding I/B trunked Station WPUR492 (Francis Petition); Petition for Reconsideration filed May 28, 2002 by Counsel for Ted S. Henry regarding I/B trunked Station WPUT210 (Thomas Petition). We will address the petitions together in a single order because they present near-identical issues, arguments and facts, except the identity of the applicants and the licensed frequencies.

Data, Inc. (RF Data), which is owned by Thomas K. Kurian (Kurian).<sup>2</sup> Henry asserts that Francis is an employee of Spectrum Wireless, which shares an address and telephone number with RF Data, and of which Kurian is the corporate secretary and registered agent.<sup>3</sup> From this, Henry infers that Kurian is Francis's employer.<sup>4</sup>

3. On May 14, 2001, the Branch granted Samuel Moses (Moses) a license for trunked 450-512 MHz band I/B Station WPSI886, Mt. Lukens, California. On December 21, 2001, Moses assigned the license to Kurian.

4. On January 22, 2002, Richard Susainathan (Susainathan) filed an application for authorization to operate a trunked 800 MHz Industrial/Land Transportation station at Cobb Mountain, California.<sup>5</sup> The Branch returned the application on March 11, 2002, and requested information regarding any relationship between Susainathan and Kurian or RF Data.<sup>6</sup> The Branch directed Susainathan to provide the requested information within sixty days and indicated that failure to do so could result in the dismissal of his application. After the applicant failed to submit a timely reply to the return letter, the Branch dismissed the application on June 3, 2002.

5. On March 5, 2002, Francis<sup>7</sup> and Thomas<sup>8</sup> each filed an application for authorization to operate a trunked I/B station in the 470-512 MHz band at Pleasant Peak, California, which is near Mt. Lukens.<sup>9</sup> The address and telephone number that Thomas listed are also listed in the Commission's licensing records as Kurian's address and telephone number.<sup>10</sup> The Branch granted Francis's application on April 18, 2002, and Thomas's application on April 26, 2002.

6. On May 20 and 28, 2002, Henry filed petitions for reconsideration of the license grants to Francis and Thomas.<sup>11</sup> Henry is president of National Science and Technology Network, Inc. (NSTN),<sup>12</sup>

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<sup>2</sup> Kurian, individually and through RF Data, is the licensee of numerous trunked and conventional I/B radio stations in the Los Angeles area and elsewhere.

<sup>3</sup> Francis Petition at 4.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> FCC File No. 0000741018.

<sup>6</sup> Return Notice, Ref. No. 1325676, dated Mar. 11, 2002.

<sup>7</sup> FCC File No. 0000795756.

<sup>8</sup> FCC File No. 0000796262.

<sup>9</sup> Henry erroneously states that Francis and Thomas applied to operate at the same location as Moses. *See* Petitions at 4.

<sup>10</sup> An earlier, apparently unrelated application filed by Thomas for authorization to operate a trunked 800 MHz Business station at San Diego, California also listed this address, and an attachment to the application was printed on stationary bearing that address. *See* FCC File No. 0000741028.

<sup>11</sup> On September 26, 2002, Francis and Thomas each filed a Motion to Accept Untimely Filing and an Opposition to the Henry petition directed to his license. Given the decision set forth below denying the Henry (continued....)

which is licensed for numerous trunked and conventional 470-512 MHz band I/B radio stations in the Los Angeles area. Based upon the facts set forth above, Henry argues that the Francis and Thomas license grants should be set aside, and the Branch should make a further inquiry to determine whether Kurian is the real party in interest. Henry predicates his argument upon his alleged experience with Kurian, and the fact that other station licenses were assigned shortly after being granted.<sup>13</sup> Henry also sets forth the alleged prior connection between each licensee and Kurian and the identical locations and frequency bands for each license as evidence sufficient to warrant the reconsideration.<sup>14</sup>

### III. DISCUSSION

7. Pursuant to the standard for determining whether or not to reconsider a license grant under Sections 309 and 405 of the Communications Act of 1934<sup>15</sup> and Section 1.106(f) of the Commission's Rules,<sup>16</sup> we use a two-prong analysis. We will first consider all the allegations in the petitions as if they were true, and then determine whether those facts support a prima facie determination that the grant is inconsistent with the public interest.<sup>17</sup> It is the responsibility of the protesting party to submit a petition containing specific allegations of fact to show a grant of license would be prima facie inconsistent with the public interest.<sup>18</sup> If such a determination is made, the Division then, under the second prong of the analysis, must consider all the facts presented by both parties and determine if a reconsideration and subsequent dismissal is warranted.<sup>19</sup> The burden of proof in this matter is upon the individual requesting reconsideration of the action.<sup>20</sup>

8. The standard for determining an application's real party in interest is whether the individual has an ownership interest or is or will be in a position to actually or potentially control the operation of the station.<sup>21</sup> We conclude that even if all the evidence in the subject petitions is considered true, Henry has not made a prima facie case that Kurian is the real party in interest in either or both of the instant applications. The evidence, taken in the light most favorable for the petitioner, shows that the

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petitions filed by Henry, which we reached prior to receiving the late-filed Oppositions, we do not need to address the arguments raised therein. Therefore, we dismiss as moot the Motions to Accept Untimely Filing.

<sup>12</sup> Francis Petition at 1; Thomas Petition at 1.

<sup>13</sup> Francis Petition at 2-3; Thomas Petition at 2-3.

<sup>14</sup> Francis Petition at 2-4; Thomas Petition at 2-4.

<sup>15</sup> 47 U.S.C. § 405.

<sup>16</sup> 47 C.F.R. § 1.106.

<sup>17</sup> See *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 & n.4 (D.C. Cir. 1988).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> High Sierra Broadcasting, Inc., *Decision*, 96 FCC 2d 423, 427 (Rev. Bd. 1983).

same area and frequency band are involved with three license authorizations, all of which would potentially be used to compete with Henry. One of the three, Station WPSI886, was assigned to Kurian several months after the license was granted. The licensee of the second station, Station WPUR492, is employed by a Kurian-related company, and previously assigned another station license to Kurian's company. The applicant for the third station, Station WPUT210, used a Kurian-related address and phone number as his contact information.

9. After reviewing the record in this proceeding, we find that none of these facts, individually or collectively, establishes a prima facie case that Kurian is the real party in interest in either of the applications at issue. Further, we are not persuaded that this evidence establishes a prima facie case that either Thomas or Francis misrepresented or omitted any facts in their applications in violation of the Commission's rules.<sup>22</sup> As noted above, the issue is whether Kurian actually or potentially controls the stations licensed to Francis and Thomas. While the three individuals clearly have prior business relationships, we find that no individual fact or that the facts taken collectively constitute a prima facie showing of an ability by Kurian to control the operation of the instant radio stations at the time of licensure. Use of the same address and telephone number does not demonstrate control by Kurian. Operation at the same location and frequency band as Kurian and others does not demonstrate control by Kurian. The employment of one applicant by a company of which Kurian is the corporate secretary does not establish that Kurian has such control over the individual as to demonstrate the ability to control the operations of the applicant's station. Nor does the subsequent assignment of other licenses to Kurian indicate that Kurian had the ability to control operations prior to the assignment. Based on the record before us, we conclude that Henry has not established the existence of any agreement between the parties or even the likelihood of an agreement of the parties concerning control of the stations.

10. Moreover, we believe that the Branch's treatment of Susainathan's application, regarding which the Branch did make further inquiry regarding the real party in interest, is distinguishable from its disposition of the applications of Francis and Thomas. Susainathan represented that he would use his license to assist him in his business of constructing radio towers.<sup>23</sup> The Branch reasonably questioned whether an individual applicant with a Nevada address would in fact need four channels, loaded with ninety mobile units, to construct towers in the Los Angeles area. The Branch thus had reason to inquire and determine whether Susainathan was actually engaged in the business of tower construction. The Branch inquiry was designed to establish the bona fides of Susainathan's purported need for a license and not the existence of a relationship or agreement with Kurian. Both Francis and Thomas specified that their respective licenses would be used for providing communications for their customers.<sup>24</sup> Francis and Thomas would need the stations' capacity only after construction of their towers and their operation as private carriers engaged in for-profit communications services. Thus, Susainathan was in a different position from that of Francis and Thomas. We do not believe that asking Susainathan to demonstrate his need for a requested license is inconsistent with a license grant to Francis and Thomas without such inquiry.

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<sup>22</sup> See 47 C.F.R. §§ 1.17 (misrepresentation or willful omission is prohibited in any written statement to the Commission), 1.923(a) (applications must contain all information requested on the form or by applicable rule).

<sup>23</sup> See FCC File No. 0000741018, Schedule H, questions 1 and 2.

<sup>24</sup> See FCC File Nos. 0000795756 and 000796262, Schedule H, questions 1 and 2.

**IV. CONCLUSION**

11. For the foregoing reasons, we find that Henry has not established a prima facie case that anyone other than the applicant was the real party in interest for either of the instant applications. Accordingly, we deny the petitions for reconsideration of license grants for trunked I/B Stations WPUT210 and WPUR492.

**V. ORDERING CLAUSES**

12. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309 and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309 and 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petitions for reconsideration filed by Ted S. Henry on May 20 and 28, 2002 regarding Industrial/Business Radio Stations WPUT210 and WPUR492 ARE DENIED.

13. IT IS FURTHER ORDERED that the Motions for Acceptance of Untimely Filing filed by Jose Francis and Mathews Thomas on September 26, 2002 ARE DISMISSED AS MOOT.

14. 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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau