

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

In the Matter of Application of)
SAMUEL MOSES)
To Operate an Industrial/Business Station) FCC File No. 0000415681
in the Private Land Mobile Radio Services)
in Montrose, California)

ORDER ON FURTHER RECONSIDERATION

Adopted: December 18, 2003

Released: January 9, 2004

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

1. On October 15, 2002, Thomas K. Kurian (Kurian) requested reconsideration1 and a stay2 of the decision of the Public Safety and Private Wireless Division (Division or PS&PWD), Wireless Telecommunications Bureau (WTB), Federal Communications Commission (FCC or Commission), to dismiss the above-captioned application filed by Samuel Moses (Moses).3 For the reasons discussed below, we grant the Kurian Petition and dismiss the Motion as moot.

2. Moses requested coordination of his application for a trunked Private Land Mobile Radio (PLMR) station in Montrose, California in the Industrial Business Radio Pool from the United Telecom Council (UTC). On March 27, 2001, the UTC, an FCC-certified PLMR frequency coordinator, coordinated the application and submitted the application to the FCC for authorization of ten paired frequencies.4 The UTC submitted this application with frequency coordination number NVOUU01612. This application received FCC File No. 0415681. A second, identical application - FCC File No. 0423812, frequency coordination number NVOUU01612 - later appeared on the Commission's Universal Licensing System (ULS). On May 14, 2001, the FCC granted FCC File No. 0415681 and issued an authorization to Moses to operate trunked PLMR Station WPSI886. On May 25, 2001, Application File No. 0423812 was withdrawn.

1 See Thomas K. Kurian Petition for Reconsideration (filed Oct. 15, 2002) (Kurian Petition).

2 See Thomas K. Kurian Motion for Stay Pending Reconsideration (filed Oct. 15, 2002) (Motion).

3 See Application of Samuel Moses to Operate an Industrial/Business Station in the Private Land Mobile Radio Services in Montrose, California, Order on Reconsideration, 17 FCC Rcd 17,137 (2002) (Order on Reconsideration).

4 See FAC No. NV0UU01612.

3. On June 11, 2001, James A. Kay, Jr. (Kay) requested reconsideration⁵ of the grant of FCC File No. 0423812. Kay alleged that Moses' application would cause harmful, adjacent channel interference to his licensed operations.⁶ Accordingly, Kay sought the dismissal or denial of the application.⁷ Although FCC File No. 0423812 was identical in all respects to FCC File No. 0415681, Kay did not mention FCC File No. 0415681 in his request. Kay sent a copy of his request to Moses.⁸

4. On July 24, 2001, the Division requested the UTC to explain its frequency recommendation for Station WPSI886 in light of the interference issues Kay raised.⁹ On July 31, 2001, UTC replied and indicated that a subsequent study revealed that use of the frequencies as proposed may cause interference and degradation in service.¹⁰ Accordingly, UTC recommended that the Branch set aside the grant of the license.¹¹ On August 14, 2001, Moses opposed UTC's letter, but did not oppose the Kay Petition.¹² During the pendency of the Kay Petition, Moses filed an assignment of license application to assign Station WPSI886 to Kurian.¹³ On December 18, 2001, the Division consented to the assignment of the license for Station WPSI886 from Moses to Kurian.¹⁴

5. On September 16, 2002, the Division granted the Kay Petition, set aside the grant of Moses' application, and dismissed the application.¹⁵ In addition, the Division directed Kurian to cease operation on Station WPSI886, Montrose, California and return the authorization to the Commission.¹⁶ In response, on October 15, 2002, Kurian filed the aforementioned petition and motion.

⁵ See Letter from Robert J. Keller, Esq., counsel to James Kay, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission n.1 (June 11, 2001) (Kay Petition). Kay requested that the letter be deemed a request for reconsideration pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), in the event of a grant of the Moses application.

⁶ Kay Petition.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ See Letter from Mary Schultz, Chief, Licensing and Technical Analysis Branch, PS&PWD, WTB, FCC to UTC (July 24, 2001) (Branch Letter).

¹⁰ See Letter from Renee McIlwain, Director of Spectrum Services, UTC to Mary Shultz, Chief, LTAB, PS&PWD, FCC (July 31, 2001) (UTC Letter).

¹¹ *Id.*

¹² See Letter from Dennis C. Brown, counsel for Samuel Moses, to Magalie Roman Salas, Secretary, FCC (dated August 14, 2001, and filed August 16, 2001) (Moses Letter).

¹³ Wireless Telecommunications bureau Assignment of Authorization and Transfer of Control Applications Action, FCC file no. 0000681221, Report No. 1064 (rel. Jan. 2, 2002).

¹⁴ *Id.*

¹⁵ *Order on Reconsideration*, 17 FCC Rcd at 17,139 ¶¶ 8, 10.

¹⁶ *Id.* at 17138 ¶ 7.

6. Kurian seeks reconsideration and reversal of the Division's *Order on Reconsideration*.¹⁷ First, Kurian argues that no one filed a valid and timely petition for reconsideration.¹⁸ Second, assuming the Kay Petition is a valid petition for reconsideration, Kurian argues that he was entitled to notice and a hearing in accordance with Section 312 of the Communications Act of 1934, as amended (the Act).¹⁹ Third, assuming the Kay Petition is a valid petition for reconsideration, Kurian asserts that the Commission has no jurisdiction to adjudicate the petition because it did not act on the petition within the ninety-day period prescribed in Section 405(a) of the Act. Fourth, Kurian maintains that the rescission of the license grant is inappropriate because the allegations of interference are in error.²⁰

7. Kay opposes Kurian's Petition and asserts that it is procedurally defective. First, Kay alleges that Kurian failed to participate in the earlier stages of this proceeding and cannot intervene at this juncture.²¹ Second, Kay asserts that the Commission did not revisit the finality of the assignment of license, rather the Commission considered the propriety of the initial grant of the authorization to Moses.²² Thus, Moses could only assign to Kurian an authorization with a post-grant protest and nothing more.²³ Third, Kay maintains that his post-grant letter of protest is valid because the application was not subject to the Section 309(b) public notice requirement.²⁴ Consequently, Kay asserts that his post-grant protest was timely filed within thirty days of the grant of the authorization.²⁵ Finally, Kay maintains that Kurian's supplemental interference showing is inadequate, because it does not address the availability of equipment to operate fully within the Commission's parameters for split channel allocations.²⁶

8. Initially, we must determine whether Kay filed a valid petition for reconsideration of the subject application, FCC File No. 0415681. Section 405 permits an interested party to request reconsideration within thirty days from the date upon which the Commission gives public notice of the action complained of.²⁷ The Division did not grant application FCC File No. 0423812. In fact, this

¹⁷ Kurian Petition at 1.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ Kay Opposition at 1-2, filed Nov. 6, 2002.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ 47 U.S.C. § 405(a).

application was withdrawn. The Division granted application FCC File No. 0415681. Kay did not request reconsideration of this application. Accordingly, we find that Kay did not request reconsideration as required.²⁸

9. Kay asserts that Kurian failed to construct as required because there is no equipment available that would permit it to operate within the Commission's Rules for split channel assignments.²⁹ However, the underlying applications did not request split channel assignments. The frequencies listed on the applications are narrowband 12.5 kHz channels for which there is ample equipment available. Moreover, on May 2, 2002, Kurian timely filed his notification on FCC Form 601, File No. 00873203, that he had constructed Station WPSI886³⁰ and that the station was providing service to nine hundred mobiles. Thus, the subject station was constructed in accordance with the Commission's Rules.³¹

10. Consequently, based on the information now before us, we determine that setting aside the license was inappropriate; and, thus, we will reinstate the license grant. We therefore grant Kurian the relief it seeks: the restoration of active licenses for the captioned stations.³² As a result, we will grant the petition. Moreover, Kay did not file a petition for reconsideration against Moses' granted application. Accordingly, the grant of Moses application, FCC File No. 0415681, is a final action.³³

11. ACCORDINGLY, IT IS ORDERED, 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 Commission's Rules, 47 C.F.R. § 1.106, the Request for Reconsideration filed by Thomas K. Kurian on October 15, 2002 IS GRANTED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and Section 1.44(e) of Commission's Rules, 47 C.F.R. 1.44(e), the Motion for Stay Pending Reconsideration filed by Thomas K. Kurian on October 15, 2002 IS DISMISSED AS MOOT.

²⁸ Because Kay did not request reconsideration as required, we decline to address the remaining procedural issues concerning the validity of his petition for reconsideration.

²⁹ Opposition at 5.

³⁰ The license was granted to Moses on May 14, 2001, and subsequently transferred from Moses Kurian. The Commission received notification of construction on May 2, 2002, in compliance with 47 C.F.R. § 90.155(a) (these stations must be placed in operation within twelve months from the date of license grant).

³¹ 47 C.F.R. § 90.155(a).

³² Licenses of National Science and Technology Network, Inc. to Operate Temporary Industrial/Business Conventional Stations, *Memorandum Opinion and Order*, FCC 03-213 ¶ 9 (rel. Sept. 26, 2003).

³³ See Applications of California Water Service Company for Authority to Provide Multiple Address System Service, *Memorandum Opinion and Order*, 18 FCC Rcd 11,609 11,618-19 ¶ 18 (in the absence of a request to set aside the license grants or petition for reconsideration of the license grants, plus the completion of the thirty-day period to set aside grants, the action is final).

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), that FCC File No. 0000415681 will be REINSTATED and shall be processed consistent with this *Order on Further Reconsideration*.

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 Critical Infrastructure Division
Wireless Telecommunications Bureau