

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

In the Matter of Application of)	
)	
SAMUEL MOSES PR)	File No. 0000798190
)	
Petition for Reconsideration of License Grant for)	
Station WPUR574, Orange County, California)	
)	

ORDER ON RECONSIDERATION

Adopted: February 20, 2003

Released: February 21, 2003

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

I. INTRODUCTION

1. On May 20, 2002, Ted S. Henry (Henry) filed a petition for reconsideration (Petition)¹ of the grant of the above-captioned application by the Licensing and Technical Analysis Branch (Branch) of the Wireless Telecommunications Bureau’s Public Safety and Private Wireless Division (Division). For the reasons discussed below, we deny the Petition.

II. BACKGROUND

2. On April 18, 2002, the Branch granted the above-captioned application and issued Samuel Moses PR (Moses) a license under call sign WPUR574 for Industrial/Business (I/B) Pool frequency pair 508/511.450 MHz, Pleasant Peak, California (Station WPUR574). On May 20, 2002, Henry filed the instant Petition, which argues that we should set aside the grant, return the above-captioned application to pending status, and make further inquiry to determine whether Thomas Kurian (Kurian) is the real party in interest.² Henry is president of National Science and Technology Network, Inc. (NSTN), which is licensed for numerous trunked and conventional 470-512 MHz band I/B Pool radio stations in the Los Angeles area. Henry predicates his argument in the instant proceeding upon the circumstances of an earlier Moses application to operate a trunked I/B Pool system at Mount Lukens, California (Mt. Lukens Application), wherein Henry “suggested that Moses had filed that application on behalf of, and for the benefit of Kurian.”³ In this connection, Henry notes that the Division set aside the Branch’s grant (call

¹ See Petition for Reconsideration filed by Ted S. Henry on May 20, 2002 (Petition).

² *Id.* at 1-3. On September 26, 2002, Moses filed a Motion to Accept Untimely Filing and an Opposition to the Petition. On October 7, 2002, Henry filed a Consolidated Reply. Given the decision set forth below denying the Petition, which we reach independent of the late-filed Opposition, we do not need to address the pleadings filed subsequent to the filing of the Petition. Therefore, we dismiss as moot Moses’ Motion to Accept Untimely Filing.

³ Petition at 2.

sign WPSI886) and dismissed the Mt. Lukens Application.⁴ Henry further notes the Branch's action in another application proceeding ("Susainathan Application"), wherein that applicant was required to explain its business relationship with Kurian and R F Data, Inc. (R F Data).⁵ Based on the foregoing, Henry urges us to set aside the Branch's grant of the above-captioned application and require Moses to explain its business relationship with Kurian and R F Data.

III. DISCUSSION

3. In determining whether or not to reconsider a license grant under Sections 309 and 405 of the Communications Act of 1934⁶ and Section 1.106(f) of the Commission's Rules,⁷ we will use a two-prong analysis. We will first consider all the allegations in the Petition 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.⁸ 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.⁹ 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.¹⁰ The burden of proof in this matter is upon the individual requesting reconsideration of the action.¹¹

4. 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.¹² We conclude that even if all the evidence in the subject Petition is considered true, Henry has not made a *prima facie* case that Kurian is the real party in interest in the instant application. The evidence, taken in the light most favorable for the petitioner, shows the following: (1) Henry filed informal pleadings against the Mt. Lukens Application that alleged that Kurian was the real party in interest based primarily on the subsequent assignment of the license for Station WPSI886 from

⁴ *Id.* at 1-2.

⁵ *Id.* at 3 *citing* Application of Richard Susainathan, FCC File No. 0000741018, Notice of Application Return, Ref. No. 1325676 (March 11, 2002). Kurian is the President of R F Data. *See* Petition at 2, n.4.

⁶ 47 U.S.C. § 405.

⁷ 47 C.F.R. § 1.106.

⁸ *See Astroline Communications Company Limited Partnership v. FCC*, 857 F. 2d 1556, 1561 & n.4 (D.C. Cir. 1988).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *See High Sierra Broadcasting, Inc., Decision*, 96 FCC 2d 423, 427 (Rev. Bd. 1983).

Moses to Kurian; (2) the Division set aside and dismissed the Branch's grant of the Mt. Lukens Application; and (3) the Branch required Susainathan to explain his business relationship with Kurian.¹³

5. After reviewing the record in this proceeding, we find that none of these facts, individually or collectively, establish a *prima facie* case that Kurian is the real party in interest in the application at issue. As noted above, the issue is whether Kurian actually or potentially controls the station licensed to Moses. While Moses and Kurian 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 station at the time of licensure. Further, we do not believe that the subsequent assignment of other Moses licenses to Kurian indicates 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 subject station.

6. Moreover, we find Henry's apparent reliance on the Division's treatment of the Mt. Lukens Application and Susainathan Application to be misplaced in terms of being dispositive of what action is appropriate here. In fact, we find that the Petition fails to offer any nexus between these two applications or relevance to the Branch's grant of the above-captioned application. Relative to the Mt. Lukens Application, the Petition's reference to filings and the subsequent set aside and dismissal, are misplaced because, *inter alia*, the Division's action on the Mt. Lukens Application was based on engineering issues. Consequently, given that no engineering issues have been presented here, we believe that this does not provide a basis for reconsideration or set aside under the circumstances presented. Moreover, the Division expressly found that Henry Radio "did not provide any arguments that would have warranted reconsideration of the license grant to Moses."¹⁴

7. Further, relative to the Susainathan Application, the Petition asks us to require Moses to explain his business relationship to Kurian because the Branch required Susainathan to explain his business relationship to Kurian. We note that the Branch's treatment of the Susainathan Application, regarding which the Branch did make further inquiry regarding the real party in interest issue, is distinguishable from its disposition of the above-captioned application. Susainathan represented that he would use his license to assist him in his business of constructing radio towers.¹⁵ 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. The above-captioned application specified that the license would be used for providing communications for customers.¹⁶

¹³ See Petition at 2-3 *citing* Henry Radio Amended Informal Petition (filed June 12, 2001) (concerning FCC File No. 0000415681, Station WPSI886).

¹⁴ See Application of Samuel Moses, *Order on Reconsideration*, 17 FCC Rcd 17137 (WTB PSPWD 2002). In that case, the grant of the Moses application was set aside and the application was dismissed on other grounds. Kurian as assignee was required to cease operation on Station WPSI886, Montrose, California and return the authorization to the Commission.

¹⁵ See FCC File No. 0000741018, Schedule H, questions 1 and 2.

¹⁶ See FCC File No. 0000798190, Schedule H, questions 1 and 2.

Moses would need the station's capacity only after construction of the tower and the operation as a private carrier engaged in for-profit communications services. Thus, Susainathan was in a different position from that of Moses. We do not believe that asking Susainathan to demonstrate his need for a requested license is inconsistent with a license grant to Moses in this instance without such inquiry.

IV. CONCLUSION

8. 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 the instant application. Accordingly, we deny the Petition for Reconsideration of the Branch's grant of the above-captioned application of Samuel Moses PR on April 18, 2002.

V. ORDERING CLAUSES

9. 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 Petition for Reconsideration filed by Ted S. Henry on May 20, 2002, IS DENIED.

10. IT IS FURTHER ORDERED that the Motion for Acceptance of Untimely Filing filed by Samuel Moses on September 26, 2002, IS DISMISSED AS MOOT.

11. 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