

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

In the Matter of )  
 )  
Thomas K. Kurian, )  
Renewal and Modification of 800 MHz Station ) File Nos. 0000539507, 0000530603 and  
WNXN838 ) 0000608115

MEMORANDUM OPINION AND ORDER  
AND  
PROPOSED ORDER OF MODIFICATION

Adopted: March 13, 2003

Released: March 14, 2003

By the Chief, Policy and Rules Branch, Commercial Wireless Division:

I. INTRODUCTION

1. The Policy and Rules Branch has before it a petition for reconsideration of the decision by the Commercial Wireless Division’s Licensing and Technical Analysis Branch (Branch) to renew Station WNXN838, licensed to Thomas K. Kurian (Kurian). We also have before us three petitions for reconsideration and an informal request for Commission action regarding the modification of Station WNXN838.

2. For the reasons stated below, we deny Nextel Communications, Inc.’s (Nextel) Petition for Reconsideration and Set Aside of Renewal (Nextel Petition I) filed on August 24, 2001, which requests that we rescind the renewal of Station WNXN838 (file no. 0000539507). We also grant in part Petitions for Reconsideration filed by Nextel (Nextel Petition II) and by Ruffin Gaming, LLC (Ruffin) on September 25, 2001, which request that we set aside the modification of license for Station WNXN838 (file no. 0000530603). We grant in part these petitions by setting aside the grant of a fixed base station on a primary, rather than secondary, basis.<sup>1</sup>

3. In addition, we address a Petition for Reconsideration or, in the alternative, Petition for Revocation filed by E.S.P. Leasing Corp. (ESP) on October 25, 2001, by dismissing as untimely filed that portion of the pleading that requests set aside of the modification of the license for Station WNXN838 (file no. 0000539507), and denying the alternative petition for revocation.

4. Finally, we address a second modification application (file no. 0000608115) filed by Kurian on September 27, 2001, which seeks to add a second fixed base station on a primary basis and to increase both the transmitter output power and effective radiated power (ERP) of mobile units from 30

<sup>1</sup> We also dismiss as moot the informal request of the Personal Communications Industry Association (PCIA), filed on November 13, 2001, to reinsert a secondary status condition on the authorization for Station WNXN838.

watts to 50 watts. We propose to modify Kurian's license, pursuant to section 316 of the Communications Act, as amended (Act),<sup>2</sup> because the application was erroneously granted.<sup>3</sup> Specifically, we propose (a) to lower the authorized maximum transmitter output power and ERP of all mobile units from 50 watts to 30 watts, and (b) to modify the operating authority for the subject site and all mobile units licensed to Station WNXN838 from primary to secondary status.

## II. BACKGROUND

5. This proceeding arises from an application to renew and two applications to modify the license for Station WNXN838. On April 11, 2001, the Branch approved the assignment of Station WNXN838 from CB Display Service to Kurian.<sup>4</sup> Upon assignment to Kurian, Station WNXN838 was classified as a conventional Business Radio Service (GB) license, and was authorized to provide mobile-only service on a secondary, non-interference basis with 50 mobile units, at a maximum transmitter output power of 15 watts, and a maximum transmitter ERP of 30 watts. The station was authorized to operate within a 113 km (70 miles) radius of Las Vegas, Nevada on five General Category paired frequencies: 851.7625, 852.2375, 852.8375, 853.3625, and 854.5875 MHz.

6. On July 7, 2001, Kurian filed an application to modify Station WNXN838 (file no. 0000530603) in four respects: (1) to change the radio service from conventional Business Radio Service (GB) to commercial Specialized Mobile Radio (SMR) Service (GX); (2) to increase the number of mobile units from 50 to 100; (3) to increase the maximum transmitter output power for the mobile units from 15 to 30 watts, with no change in the maximum transmitter ERP of 30 watts; and (4) to add a fixed base station on a primary basis with a maximum transmitter output power of 30 watts and a maximum transmitter ERP of 30 watts.<sup>5</sup> The Branch granted the modification application on August 27, 2001.<sup>6</sup> On September 25, 2001, Nextel<sup>7</sup> and Ruffin<sup>8</sup> each filed a Petition for Reconsideration to set aside the modification of license for Station WNXN838. On October 25, 2001, ESP filed a Petition for Reconsideration or, in the alternative, Petition for Revocation, to set aside the modification of the license for Station WNXN838.<sup>9</sup>

7. On July 26, 2001, Kurian filed an application to renew Station WNXN838 (file No.

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<sup>2</sup> 47 U.S.C. § 316.

<sup>3</sup> No party challenged the erroneous grant of that application.

<sup>4</sup> File No. 0000391339. Public Notice, "Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action," Report Number: 829, 2001 WL 357034 (F.C.C.) (Apr. 11, 2001).

<sup>5</sup> The Branch returned the application on July 24, 2001 due to a TIN discrepancy. Kurian resubmitted the application on August 1, 2001. The Branch returned the application on August 15, 2001, and directed Kurian to file construction information. Kurian resubmitted the application on August 23, 2001.

<sup>6</sup> Public Notice, "Wireless Telecommunications Bureau Site-By-Site Action," Report Number: 957, 2001 WL 1006866 (F.C.C.) (Sept. 5, 2001).

<sup>7</sup> Nextel won numerous 800 MHz SMR Economic Area (EA) licenses in Auction No. 34, including EA 153 (Las Vegas, NV-AZ-UT) Blocks DD, E, EE, and EF, which contain the five frequencies authorized to Kurian under Station WNXN838. Nextel states that it intends to incorporate these frequencies into its SMR system in EA 153. Nextel Petition II at 2.

<sup>8</sup> Ruffin operates the New Frontier Hotel and Casino and is the licensee of 800 MHz Station WNCS288. Station WNCS288 is licensed to operate three 800 MHz frequency assignments on an exclusive, trunked basis, including paired channel 851.7625/806.7625 MHz. New Frontier uses this channel to support its hotel and casino operations. Ruffin Petition at 2. Station WNXN838 also is licensed to operate on frequency 851.7625 MHz.

<sup>9</sup> ESP is the licensee of conventional SMR Station KNNG473, which operates on frequency 852.2375 MHz from Las Vegas, with 75 mobile units. Station WNXN838 also is licensed to operate on frequency 852.2375 MHz.

0000539507), which the Branch granted on July 27, 2001. On August 24, 2001, Nextel filed a Petition for Reconsideration and Set Aside of Renewal.

8. On September 27, 2001, Kurian filed an application to modify Station WNXN838 (file no. 0000608115) to add a second fixed base station on a primary basis with a maximum transmitter output power of ten watts and a maximum transmitter ERP of five watts, and to increase the maximum transmitter output power and ERP of mobile units from 30 watts to 50 watts.<sup>10</sup> The Branch granted the application on October 25, 2001.<sup>11</sup> No party challenged the grant of that application.

### III. DISCUSSION

#### A. Renewal of Station WNXN838, File No. 0000539507

9. We reject Nextel's argument that we should set aside the renewal of Station WNXN838, as a mobile-only, secondary authorization (file No. 0000539507). Although Nextel argues that secondary operations by Kurian would "directly inhibit" Nextel's primary use of the five frequencies at issue,<sup>12</sup> Nextel has provided no evidence that Kurian's secondary operations have or would interfere with Nextel's operations. Absent such evidence, there is no basis in the record to set aside the renewal of Station WNXN838, as a secondary authorization. Secondary operations "may not cause interference to operations authorized on a primary basis and . . . are not protected from interference from those primary operations."<sup>13</sup> Thus, to the extent that Kurian is a holder of a secondary authorization, he may not cause interference to Nextel's operations and would have to accept any interference from Nextel or other primary co-channel licensees.

#### B. Modification of Station WNXN838, File No. 0000530603

10. Nextel, Ruffin and ESP each request that we set aside the grant of Kurian's first modification application (file no. 0000530603).<sup>14</sup> For the reasons stated below, we grant in part the relief sought by Nextel and Ruffin, and dismiss as untimely, the petition filed by ESP. Specifically, we set aside the grant of a fixed base station on a primary basis to Kurian, but allow such base station to be operated on a secondary basis. We uphold the change in radio service from GB to GX, the increase in output power from 15 to 30 watts, and the increase in the number of mobile units from 50 to 100.

11. Operating Authority. We reverse the Branch's decision to grant primary operating authority to Kurian. Kurian obtained primary operating authority as a result of defective frequency coordination and the Branch's erroneous grant of Kurian's modification application (file no. 0000530603). PCIA, the frequency coordinator, should not have coordinated and filed this application with the Commission.<sup>15</sup> Rather, PCIA should have declined to coordinate the application because it sought to add an impermissible primary fixed site to a secondary authorization. Kurian plainly indicated his intention to add a primary site with a "P" in the site status box, box 20 of Schedule D to FCC Form

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<sup>10</sup> The Branch returned the application on October 2, 2001 due to a TIN discrepancy. Kurian resubmitted the application on October 11, 2001.

<sup>11</sup> Public Notice, "Wireless Telecommunications Bureau Site-By-Site Action," Report Number: 1008, 2001 WL 1335043 (F.C.C.) (Oct. 31, 2001).

<sup>12</sup> Nextel Petition I at 2; Nextel Reply to Opposition at 1.

<sup>13</sup> 47 C.F.R. § 90.7.

<sup>14</sup> The modification application was granted on August 27, 2001.

<sup>15</sup> PCIA Frequency Coordination No. PC20011060013, coordinated June 29, 2001. Incumbent General Category licensees that modify their licenses must obtain frequency coordination from a certified 800 MHz band frequency coordinator. *See* 47 C.F.R. §§ 90.693(b) & (c), 90.147, 90.175.

601, and it appears that PCIA overlooked Kurian's request to add the site on a primary basis.<sup>16</sup> Further, PCIA's coordination of the fixed site on a primary basis is contrary to the longstanding freeze on the filing of new applications for General Category SMR channels,<sup>17</sup> because the addition of a primary site on a secondary authorization is equivalent to an application for new General Category channels. Finally, PCIA should have determined that the proposed fixed site was less than two miles from a co-channel primary licensee (ESP), Station KNNG473, on frequency 852.2375 MHz and thus would violate the Commission's co-channel separation requirement.<sup>18</sup>

12. Although this matter arose from PCIA's defective coordination of Kurian's application, the Branch erred by granting primary operating authority to Kurian. The Branch failed to determine that conversion of a secondary authorization to primary status would violate the freeze on the filing of new applications for General Category SMR channels.<sup>19</sup> The Branch also failed to recognize the existence of duly licensed, primary co-channel licensees (such as ESP) located substantially less than the required co-channel distance separation. Moreover, several months before Kurian acquired the secondary authorization for Station WNXN838, the Branch granted Nextel a primary authorization for EA 153 (Las Vegas, NV-AZ-UT) Blocks DD, E, EE and EF following Auction No. 34. These blocks contain the five frequencies authorized on a secondary basis to Kurian for Station WNXN838,<sup>20</sup> and Nextel's right to use these frequencies is limited by the requirement that it must not interfere with the operations of licensees who had primary authorizations when Nextel won its licenses.

13. We reject Kurian's argument that PCIA's coordination and the Branch's grant of the fixed site on a primary basis are permitted under section 90.693 of the Commission's rules.<sup>21</sup> Kurian claims that section 90.693 "does not restrict an incumbent from converting to co-primary operation,"<sup>22</sup> and that he "was simply authorized to make more effective use of the frequencies."<sup>23</sup> There is no basis in the plain text of section 90.693 to support Kurian's argument. Section 90.693 provides a narrow exception to the General Category freeze. It permits incumbent licensees "to add, remove or modify transmitter sites within their original 22 dBuV/m field strength contour without prior notification to the Commission so long as their original 22 dBuV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6)."<sup>24</sup> In

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<sup>16</sup> Before filing the application, PCIA asked its FCC counsel "whether the Commission's Rules prevented the addition of a fixed station for a secondary authorization." Letter from Alan S. Tilles, PCIA counsel, to Terrence L. Schaul at 2, dated November 9, 2001. There is no indication, however, that it asked whether the site could be added on a primary basis. *Id.* (There are no "notes in PCIA's coordination database which reveal[] that PCIA took any action with regard to the secondary operation.")

<sup>17</sup> See *In the Matter of Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, Order*, 10 FCC Rcd 13190 (WTB 1995) (*General Category Freeze Order*).

<sup>18</sup> 47 C.F.R. § 90.621(b).

<sup>19</sup> See *General Category Freeze Order*, 10 FCC Rcd 13190.

<sup>20</sup> Public Notice, "Wireless Telecommunications Bureau Grants 800MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) And Upper Band (861-865 MHz) Auction Licenses, Auction Event No. 34, DA 00-2874, 16 FCC Rcd 1427 (rel. Dec. 20, 2000).

<sup>21</sup> Consolidated Opposition to Petitions for Reconsideration at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 47 C.F.R. § 90.693. Section 90.621(b)(4), in turn, provides that a licensee may locate a station 113 km (70 miles) to 88 km (55 miles) from a co-channel licensee, provided that it complies with transmitter effective radiated power (ERP) and antenna height limitations set forth in the rule, and that it may locate a station less than 55 miles from a co-channel licensee, provided that it obtains a Commission waiver, notifies all affected co-channel licensees, and

(continued....)

adopting this narrow exception, the Commission explained that it would enable incumbent licensees “to add new transmitters in their existing service area, without prior notification to the Commission, *e.g.*, to fill in ‘dead spots’ in coverage or to reconfigure their systems to increase capacity within their service area, so long as their 22 dBu interference contours are not expanded.”<sup>25</sup> The Commission thus never intended that the rule would enable secondary operators to obtain co-primary operating authority. Moreover, the fixed site granted to Kurian is less than two miles from a co-channel primary licensee (ESP), Station KNNG473, on frequency 852.2375 MHz and thus violates the Commission’s co-channel separation requirements.<sup>26</sup> For these reasons, we reverse the grant of primary operating authority to Kurian.<sup>27</sup> Kurian however may operate the fixed site on a secondary, non-interference basis.

14. Grant of Additional Mobile Units. We deny petitioners request that we reverse the grant of Kurian’s modification application (file no. 0000530603) to the extent that it increased the number of authorized mobile units from 50 to 100. Nextel and Ruffin oppose the increase in mobile units,<sup>28</sup> arguing that the increased number of mobile units operating on a primary basis would interfere with their operations.<sup>29</sup> Because we set aside the grant of primary operating authority arising from this application in this order,<sup>30</sup> the number of mobile units is inconsequential. Whether Kurian operates one, 50, or 100 mobile units, he must cease any operations that interfere with a primary licensee on any of the five frequencies at issue and must accept interference from such licensees’ operations. We therefore deny petitioners’ request to reduce the number of authorized mobile units.

15. Grant of Increased Power. We deny Ruffin’s request that we reverse the grant of Kurian’s modification application (file no. 0000530603) to the extent that it increased the authorized maximum transmitter output power from 15 watts to 30 watts for mobile units. Ruffin argues that operations with a maximum transmitter output power of 30 watts will cause greater interference than operations at 15 watts.<sup>31</sup> Staff engineers have determined that such an increase in output power, without an increase in the authorized maximum transmitter ERP of 30 watts, would not increase the 22 dBuV/m field strength contour of Station WNXN838 and thus is permissible under Section 90.693(b) of the Commission’s rules. Because the maximum ERP of 30 watts for mobile units has not changed, we deny Ruffin’s request that we order Kurian to reduce the authorized output power.

16. Grant of GX Status. We also deny Ruffin’s request that we reverse the grant of Kurian’s modification application (file no. 0000530603) to the extent that it changed the authorized service from conventional Business Radio Service (GB) to commercial Specialized Mobile Radio (SMR) Service (GX). Ruffin argues that it is illogical to permit Kurian to conduct commercial operations on a secondary

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submits an engineering analysis showing that co-channel licensees will be protected from interference. 47 C.F.R. § 90.621(b)(4)

<sup>25</sup> See, *e.g.*, Amendment Of Part 90 Of The Commission's Rules To Facilitate Future Development Of SMR Systems In The 800 MHz Frequency Band, *First Report and Order*, 11 FCC Rcd 1463 at ¶86 (1995).

<sup>26</sup> 47 C.F.R. § 90.621(b).

<sup>27</sup> PCIA states that it never intended for Kurian to obtain a primary authorization as a result of the modification application (file no. 0000530603), and requests that we insert a secondary status condition on Kurian’s license for Station WNXN838. Letter dated November 9, 2001 from Alan S. Tilles, PCIA counsel, to Terrence L Schaul at 2-3. We dismiss PCIA’s request as moot in light of our disposition of this issue above.

<sup>28</sup> Nextel Petition II at 5; Ruffin Petition at 3.

<sup>29</sup> *Id.*

<sup>30</sup> See paras. 11-13, *supra*.

<sup>31</sup> Ruffin Petition at 5.

basis.<sup>32</sup> We are unaware, however, of any Commission rule, policy or precedent that would prohibit GX operations on a secondary, non-interference basis. We therefore deny Ruffin's request to set aside the grant of GX operating authority.

17. ESP Petition. We dismiss in part and deny in part ESP's petition to reverse the grant of Kurian's modification application (file no. 0000530603) or, alternatively, revoke his license. Section 405(a) of the Communications Act provides that "[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."<sup>33</sup> On September 5, 2001, the grant of Kurian's modification application was placed on public notice.<sup>34</sup> ESP filed its petition on October 25, 2001, 20 days after the prescribed 30-day statutory period. ESP did not seek leave or demonstrate good cause for its late filing. Thus, insofar as ESP's petition challenges the modification application, it was filed untimely under section 405(a) of the Communications Act and section 1.106(f) of the Commission's rules and therefore is dismissed.

18. We deny ESP's Petition to the extent that it requests that we revoke Kurian's license based on alleged intentional harmful interference from Station WNXN838. ESP claims that since Kurian acquired Station WNXN838, it has detected non-voice, digital transmissions emanating from Kurian's business office.<sup>35</sup> ESP's allegations, supported by the Declaration of Robert Barcal, Sr.,<sup>36</sup> lack specificity regarding how and when it performed the monitoring of Kurian's operations. We therefore find that the record is insufficient to commence a revocation proceeding and deny ESP's request.

### C. Proposed Modification of Station WNXN838, File No. 0000608115

19. Pursuant to Section 316(a)(1) of the Act,<sup>37</sup> we propose to modify Kurian's license for Station WNXN838 by (1) requiring that all mobile operations and all operations from a second fixed site be conducted on a secondary, non-interference basis, and (2) lowering the authorized maximum transmitter output power and ERP of mobile units from 50 watts to 30 watts.<sup>38</sup> The proposed modifications would serve the public interest by preventing harmful interference to licensees which hold primary authorizations on any of the five frequencies licensed to Kurian in the Las Vegas area (while allowing Kurian to operate on a secondary basis) and by preserving the existing coverage areas of the affected parties.

20. On September 10, 2001, PCIA coordinated Kurian's modification application to add a second fixed site on a primary basis and to increase the authorized maximum transmitter output power

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<sup>32</sup> *Id.* at 5-6.

<sup>33</sup> 47 U.S.C. § 405(a).

<sup>34</sup> Public Notice, "Wireless Telecommunications Bureau Site-By-Site Action," Report Number: 957, 2001 WL 1006866 (F.C.C.) (Sept. 5, 2001).

<sup>35</sup> ESP Petition at 4-5, Ex. A.

<sup>36</sup> ESP Petition at Ex. A.

<sup>37</sup> Section 316(a)(1) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity. 47 U.S.C. § 316(a)(1).

<sup>38</sup> Kurian is licensed to operate two fixed sites. In ruling on various petitions for reconsideration in this order, however, we determine that Kurian may not conduct any primary operations in connection with the fixed site granted via his first modification application (file no. 0000530603). The proposed modifications arise from the erroneous grant of Kurian's second modification application (file no. 0000608115), which added a second fixed site on a primary basis and increased the mobile power levels from 30 to 50 watts. Because no party filed a petition for reconsideration of that action, we proceed under section 316 of the Act on our own motion.

and ERP of mobile units from 30 to 50 watts (file no. 0000608115).<sup>39</sup> This application was filed on September 27, 2001, and granted by the Branch on October 25, 2001,<sup>40</sup> just weeks after it erroneously granted another application for a fixed site on a primary basis to Kurian resulting, in part, from PCIA's defective coordination of that application.<sup>41</sup>

21. We propose to modify Kurian's license for Station WNXN838, because the grant of a fixed site on a primary basis to Kurian abrogates the right of primary co-channel licensees (both site-based and geographic) on the five frequencies authorized to Kurian in the Las Vegas area to be free from harmful interference from Station WNXN838. In addition, the increase in maximum transmitter output power and ERP of mobile units from 30 watts to 50 watts expands the interference contour of Station WNXN838 beyond that which Kurian acquired upon assignment of the license and therefore violates both Section 90.693 and the freeze on the filing of new applications for General Category SMR channels.<sup>42</sup>

22. Pursuant to Section 1.87(a) of the Commission's Rules,<sup>43</sup> we will not issue a modification order until Kurian has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the proposed modification, Kurian must, within 30 days of the release date of this Memorandum Opinion and Order and Proposed Order of Modification, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.<sup>44</sup> If no protest is filed, Kurian will be deemed to have waived his right to protest the modification and will be deemed to have consented to the proposed modification.<sup>45</sup>

#### IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act, 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 and Set Aside of Renewal filed by Nextel Communications, Inc. on August 24, 2001 (file no. 0000539507) is DENIED.

24. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 90.693(b) of the Commission's rules, 47 C.F.R. §§ 1.106, 90.693(b), the Petition for Reconsideration filed by Nextel Communications, Inc. on September 25, 2001 (file no. 0000530603) is GRANTED in part as specified herein.

25. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 90.693(b) of the

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<sup>39</sup> PCIA Frequency Coordination No. PC20012430010, coordinated September 10, 2001.

<sup>40</sup> Public Notice, "Wireless Telecommunications Bureau Site-By-Site Action," Report Number: 1008, 2001 WL 1335043 (F.C.C.) (Oct. 31, 2001).

<sup>41</sup> See para. 11, *supra*.

<sup>42</sup> See *General Category Freeze Order*, 10 FCC Rcd 13190.

<sup>43</sup> 47 C.F.R. § 1.87(a).

<sup>44</sup> This address is proper only for protests submitted by U.S. mail. For hand-delivered or messenger-delivered paper filings, the proper address is 236 Massachusetts Ave., N.E., Suite 110, Washington, D.C. 20002. For documents sent by overnight delivery service other than United States Postal Service Express Mail and Priority Mail, the proper address is 9300 East Hampton Dr., Capitol Heights, MD 20743. For further information, contact the Office of the Secretary at (202) 418-0300 or [mdortch@fcc.gov](mailto:mdortch@fcc.gov).

<sup>45</sup> 47 C.F.R. § 1.87(g)&(h).

Commission's rules, 47 C.F.R. §§ 1.106, 90.693(b), the Petition for Reconsideration filed by Ruffin Gaming, LLC on September 25, 2001 (file no. 0000530603) is GRANTED in part as specified herein.

26. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405(a), and Section 1.106(f) of the Commission's rules, 47 C.F.R. § 1.106(f), the Petition for Reconsideration or, in the alternative, Petition for Revocation filed by E.S.P. Leasing Corp. (ESP) on October 25, 2001 is DISMISSED as untimely filed insofar as it seeks reconsideration of the grant of file no. 0000530603.

27. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 312 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 312, the Petition for Reconsideration or, in the alternative, Petition for Revocation filed by E.S.P. Leasing Corp. (ESP) on October 25, 2001 is DENIED insofar as it seeks revocation of the license for Station WNXN838.

28. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, the Informal Request to reinsert a secondary status condition on the authorization for Station WNXN838 filed by the Personal Communications Industry Association on November 13, 2001 (file no. 0000530603) is DISMISSED as moot.<sup>46</sup>

29. IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 316(a) and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, the license for Station WNXN838, licensed to Thomas K. Kurian, BE MODIFIED by reducing the maximum authorized transmitter output power and ERP of mobile units from 50 watts to 30 watts on frequencies 851.7625, 852.2375, 852.8375, 853.3625, and 854.5875 MHz (file no. 0000608115).

30. IT IS FURTHER PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 316(a) and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, the license for Station WNXN838, licensed to Thomas K. Kurian, BE MODIFIED by requiring that all operations on frequencies 851.7625, 852.2375, 852.8375, 853.3625, and 854.5875 MHz be conducted on a secondary, non-interference basis (file no. 0000608115).

31. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Proposed Order of Modification shall be sent by certified mail, return receipt requested, to Thomas K. Kurian, 4019 S. Industrial Rd., Las Vegas, Nevada 89103, and to counsel for Thomas K. Kurian, Dennis C. Brown, Esq., 126/B North Bedford Street, Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>46</sup> Letter dated November 9, 2001 from Alan S. Tilles, PCIA counsel, to Terrence L. Schaul at 3.