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

In the Matter of	)	
	)	
WIRELESS TELECOMMUNICATIONS, INC.	)	File No. 0003130320
	)	
Application for Assignment of Broadband Radio Service Licenses WLK341, WNTI856, WMH868, WMI343, and WMH308 to Vermont Telephone Company, Inc.	)	

ORDER ON RECONSIDERATION

Adopted: December 9, 2009 **Released: December 10, 2009**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Wireless Telecommunications Bureau (Bureau) has before it a petition[1] filed by Utopian Wireless Corporation (Utopian) seeking reconsideration of the Bureau's March 16, 2009 *Memorandum Opinion and Order* approving Wireless Telecommunications, Inc.'s (WTCI) application[2] to assign five Broadband Radio Service (BRS) licenses (WLK341, WNTI856, WMH868, WMI343, and WMH308) (collectively, BRS Stations) to Vermont Telephone Company, Inc. (VTEL).[3] For the reasons set forth below, we deny the Petition.

II. BACKGROUND

2. On August 8, 2007, WTCI filed an application to assign four BRS Stations located in Rutland Vermont – Stations WLK341, WNTI856, WMH868, and WMI343 – and one BRS Station located in Cornwall, Vermont – Station WMH308 – to VTEL.[4] Public notice of the filing of the assignment

[1] Petition for Reconsideration, Utopian Wireless Corporation (filed Apr. 15, 2009) (Petition).

[2] File No. 0003130320 (filed Aug. 8, 2007) (Assignment Application).

[3] Wireless Telecommunications, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 3162 (2009) (*MO&O*). On the same day, the Bureau issued a companion order approving WTCI's assignment of certain BRS Basic Trading Area (BTA) licenses, which were part of WTCI's bankruptcy estate, and were subject to a Master Settlement Agreement with the Commission to resolve outstanding installment payment obligations. See Wireless Telecommunications, Inc. Debtor-in Possession, Assignor, and the Vermont Telephone Company, Inc., Assignee, *Memorandum Opinion and Order*, 24 FCC Rcd 3177, 3178-79 (2009).

[4] Assignment Application. These licenses are part of WTCI's bankruptcy estate, but are not part of the Master Settlement Agreement. See MO&O, 24 FCC Rcd at 3163, 3175 ¶¶ 2, 34. The purpose of the Assignment Application was to effectuate the bankruptcy court approved sale of these licenses from WTCI to VTEL. *See id.* at 3163 ¶ 4 , citing Wireless Telecommunications, Inc., *et al., Order*, Case No. 5-02-03994 JJT (Bank. Ct. M.D. PA Aug. 8, 2007) (Bankruptcy Court Order).

application was given on August 15, 2007.[5] Petitions to deny the application were due by August 29, 2007.[6] No petitions to deny were filed during this period. On March 6, 2008, Utopian filed a Petition to Deny the assignment of the BRS Stations located in Rutland to VTEL along with a motion to accept its late-filed petition to deny and a request for a waiver of Section 1.939 of the Commission's Rules.[7] On March 27, 2008, Utopian filed a Request for an Order to Show Cause asking the Bureau to designate certain issues for hearing and objecting to the assignment of Station WMH308 to VTEL.[8]

3. On March 16, 2009, the Bureau denied Utopian's motion to accept its late-filed petition to deny and its associated waiver request.[9] The Bureau concluded that Utopian had not shown that a waiver of Section 1.948(j) of the Commission's Rules was warranted.[10] The Bureau further concluded that Utopian's Request for Order to Show Cause was procedurally defective because the Commission does not recognize motions to revoke.[11] The Bureau then stated that it would treat both pleadings as informal objections.[12]

4. In the *MO&O*, the Bureau went on to reject Utopian's arguments and deny the informal objections. First, the Bureau concluded that WTCI and VTEL were qualified to hold and assign licenses under Section 310(d) of the Communications Act and the Commission's Rules.[13] Then, the Bureau rejected Utopian's claim that the licenses for the BRS Stations located in Rutland should be revoked because Satellite Signals of New England, Inc. and Sanguinetti Investment Corp. (both former licensees of the above referenced stations and collectively, SSNE) and WTCI misrepresented facts or lacked candor in a 2004 assignment application through which SSNE sought Commission consent to assign the BRS Stations to WTCI.[14] Specifically, the Bureau rejected Utopian's claim that SSNE and WTCI misrepresented the cancellation of the licenses for two BTAs in response to question 13(a), finding that the automatic cancellation of SSNE's licenses was an event known to the Bureau.[15] The Bureau also rejected Utopian's claim that SSNE and WTCI misrepresented the construction and operational status of the BRS Stations in Rutland in response to question 16(b), finding that Utopian had failed to account for the fact that SSNE had received waivers of the discontinuance of service rule.[16] The Bureau further

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[5] Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, *Public Notice*, Report No. 3377 (rel. Aug. 15, 2007) at 1.

[6] *Id.*, *see also* 47 C.F.R. § 1.948(j)(1)(iii).

[7] Motion to Accept Petition to Deny of Application for Assignment and Request for Waiver of Section 1.939 of the Commission Rules (filed Mar. 6, 2008) (Motion to Accept Petition to Deny). *See MO&O,* 24 FCC Rcd at 3166 n.48 where the Bureau explains that Utopian should have sought a waiver of 47 C.F.R. § 1.948(j)(1)(iii), the applicable rule.

[8] Request for Order to Show Cause and Consolidated Reply to Oppositions to Petition to Deny or Informal Objection (filed Mar. 27, 2008) (Request for Order to Show Cause).

[9] *MO&O,* 24 FCC Rcd at 3166 ¶ 9.

[10] *Id.* at 3167 ¶ 10.

[11] *Id.* at 3167 ¶ 11.

[12] *Id.*

[13] *Id.* at 3167-3170 ¶¶ 12-16.

[14] *Id*. at 3168-3169 ¶¶ 13-15.

[15] *Id.* at 3168 ¶ 13, *citing* Joseph W. Bollinger and Donna M. Bollinger, *Memorandum Opinion and Order*, 16 FCC Rcd 18107, 18109 ¶ 5 (2001).

[16] *Id.* at 3168-3169 ¶¶ 14-15.

rejected Utopian's allegation that Station WMH308 had never been properly constructed.[17] The Bureau then concluded that the assignment of the BRS Stations to VTEL would not result in competitive harm,[18] and that it was in the public interest to approve the Assignment Application, because the assignment could promote the efficient use of spectrum and the rapid deployment of services for the benefit of the public.[19] In addition, the Bureau stated that although the licenses subject to the Assignment Application are not included in the Master Settlement Agreement, it was in the public interest to facilitate resolution of the WTCI bankruptcy estate.[20]

5. On April 15, 2009, Utopian asked the Bureau to reconsider its decision permitting WTCI to assign the BRS stations to VTEL.[21] Utopian argues that the Bureau erred in not designating for hearing Utopian's allegations that WTCI and SSNE made intentional misrepresentations and inconsistent statements regarding the BRS Stations.[22] Utopian also argues that the Bureau should have considered the statement of Mrs. Bonamico, a former officer of SSNE, in determining whether SSNE and WTCI misled the Bureau regarding the construction of Station WMH308.[23] Utopian further argues that the Bureau erred in concluding that grant of the Assignment Application was in the public interest.[24] On April 27, 2009, both WTCI[25] and SSNE[26] filed oppositions to Utopian's Petition. In its reply, Utopian argues that the BRS Stations located in Rutland were not in operation from May 6, 2000 to November 2, 2000, when SSNE filed a notice of discontinuance of service under former Section 21.303(c) of the Commission's Rules, and that SSNE submitted misleading and contradictory documents concerning the operational status of the BRS Stations during this time period.[27]

III. DISCUSSION

6. We deny Utopian's request to reconsider our decision not to designate for hearing alleged misrepresentations made by SSNE and WTCI in the 2004 Assignment Application and other documents submitted to the Bureau.[28] Utopian's arguments appear to be based on an incorrect understanding of the evidentiary burdens involved when a petition to deny is filed. Utopian claims that "[t]he burden is on WTCI/SSNE to clarify" allegedly inconsistent statements."[29] We disagree. In order to assess the merits of a petition to deny, we employ a two-step analysis. First, the petitioner must demonstrate that it is a party in interest and make specific allegations of fact that a grant of the application would be *prima facie*

[17] *Id.* at 3169 ¶ 15.

[18] *Id.* at 3173-3175 ¶¶ 29-31.

[19] *Id.* at 3175 ¶ 34.

[20] *Id.* at 3175 ¶ 34.

[21] Petition at 1.

[22] *Id.* at 2-4.

[23] *Id*. at 4-5, *citing* Rohel Pascual, *Memorandum Opinion and Order*, 22 FCC Rcd 867 (WTB BD 2007) (*Rohel Pascual*).

[24] *Id*. at 7-8.

[25] Opposition to Petition for Reconsideration, Wireless Telecommunications, Inc. (filed Apr. 27, 2009) (WTCI Opposition).

[26] Opposition to Petition for Reconsideration, Satellite Signals of New England and Sanguinetti Investment Corp., (filed Apr. 27, 2009) (SSNE Opposition).

[27] Reply to Oppositions, Utopian Wireless Corporation (filed May 4, 2009) (Reply) at 2-5.

[28] Petition at 1-2.

[29] Reply at 1-2.

inconsistent with the public interest, convenience, and necessity.[30] Then, if the petition meets this threshold requirement, the Commission must examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.[31] If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

7. Following this two-step analysis, we reject Utopian's argument that we should reconsider our decision regarding WTCI's response to question 13(a) of the 2004 assignment application.[32] In the *MO&O*, we concluded that because the automatic cancellation of SSNE's licenses was an event known to the Bureau, there was no evidence that WTCI was attempting to conceal this action from the Bureau.[33] In light of that fact, Utopian failed to make a *prima facie* case of intent to deceive the Commission. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.[34] A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied.[35] Utopian's arguments on reconsideration regarding WTCI's response to question 13(a) are the same arguments it made in its petition to deny. Thus, Utopian has not met the standards for reconsideration.

8. We also reject Utopian's argument that the Bureau misapplied *Rohel Pascual* to the instant case by failing to find that the vague statement of Mrs. Bonamico, a former officer of SSNE, supported a conclusion that Station WMH308 was never properly constructed.[36] In *Rohel Pascual*, the Broadband Division rejected an argument that a license cancelled based on vague statement by an engineer "that the tower has not been in operation for two years."[37] Mrs. Bonamico's testimony that the station was constructed "in a house" to "keep the license active" is of less value than the affidavit offered and rejected in *Rohel Pascual*.[38] First, Mrs. Bonamico testified that the station was constructed.[39] Second, Utopian's

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[30] *See Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

[31] 47 U.S.C. § 309(d)(2).

[32] Petition at 3-4.

[33] *MO&O*, 24 FCC Rcd at 3168 ¶ 13.

[34] *See WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964) (*WWIZ*), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). A petitioner must state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. *See* 47 C.F.R. § 1.106(d)(1). The petition for reconsideration shall also, where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed. *See* 47 C.F.R. § 1.106(d)(2). In addition, pursuant to 47 C.F.R. § 1.106(c), a petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only if (i) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; (ii) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity; (iii) or the Commission or the designated authority determines that consideration of the facts relied on is required in the public interest. *See* 47 C.F.R. § 1.106(c).

[35] *See WWIZ*, 37 FCC at 686 ¶ 2 (stating that "it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken").

[36] Petition at 4-5.

[37] *See Rohel Pascual*, 22 FCC Rcd at 870 ¶ 8.

[38] *See* Utopian Petition to Deny, Exhibit I, Deposition of Lee Bonamico at 88.

[39] *Id.*

claim that "the FCC unlikely would have approved" operation from that location is speculation.[40] Moreover, Mrs. Bonamico's description of the operation is vague, which is understandable because the deposition concerned a matter unrelated to the instant case, and was not made to prove the issue at hand, *i.e.*, whether Station WMH308 was constructed. Utopian relies solely on Mrs. Bonamico's deposition testimony and provides no independent evidence concerning the construction of Station WMH308. We therefore conclude that Utopian failed to make a *prima facie* case supported by specific allegations of fact that Station WMH308 was not properly constructed.

9. In addition, we decline to consider Utopian's argument that SSNE and WTCI failed to clarify the operational status of the BRS Stations during the period between May 6, 2000 and November 2, 2000.[41] Utopian raised this argument for the first time in its Reply, depriving WTCI and SSNE of an opportunity to respond to the allegation. Replies shall be limited to matters raised in the oppositions, and new allegations may not be made in reply pleadings.[42] We find Utopian's actions in violation of Section 1.45(c) of the Commission's Rules, and thus, we decline to address this matter.

10. We also deny Utopian's request to reconsider our decision finding the grant of the Assignment Application to be in the public interest.[43] We reject Utopian's argument that we should have considered auctioning "the BRS Stations to another would be party."[44] In considering assignment applications, the Communications Act prohibits the Commission from considering whether the public interest would be served by assigning the licenses to another party.[45] As we stated in the *MO&O*, when we make a public interest finding, we consider whether the proposed assignment is likely to generate verifiable, transaction-specific public interest benefits, as opposed to speculating whether the licenses would be better served in the hands of another, unidentified party.[46] Moreover, if we denied the instant Assignment Application, the licenses for the BRS stations would not return to the Commission's inventory. Instead, the licenses would remain in WTCI's bankruptcy estate subject to the ultimate resolution of the bankruptcy.

11. We further reject Utopian's argument that we should not have considered the conclusion of the WTCI bankruptcy proceeding or the resolution of the Master Settlement as a public interest justification, given WTCI's alleged misrepresentations to the Commission.[47] As explained above, we herein affirm the Bureau's initial rejection of Utopian's argument that WTCI misled the Commission with regard to the 2004 assignment application. Given this conclusion, we further affirm the Bureau's finding that public interest benefits accrue from resolution of the WTCI bankruptcy estate, of which these licenses are part, and from putting the spectrum to use for the benefit of the public in rural Vermont and New Hampshire.[48]

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[40] Request for Order to Show Cause at 18.

[41] Reply at 2.

[42] *See* 47 C.F.R. § 1.45(c).; *See also* Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17610 n.274 (2008), *citing* Paging Systems, Inc., *Order*, 21 FCC Rcd 7225, 7229 ¶ 12 (WTB PS&PWD 2006).

[43] Petition at 7-8.

[44] *Id.* at 7.

[45] 47 U.S.C. § 310(d).

[46] *MO&O*, 24 FCC Rcd at 3175 ¶ 32.

[47] Petition at 8.

[48] We note that Utopian failed to address the precedent cited in the *MO&O* for the proposition that it is in the public interest to facilitate resolution of a bankruptcy estate that includes spectrum licenses. *MO&O*, 24 FCC Rcd at 3175 n.127, *citing* Summit Wireless WOW, LLC, Debtor-in-Possession, Summit Wireless Billings, LLC, Debtor-in-

(continued....)

IV. CONCLUSION AND ORDERING CLAUSES

12. Utopian has not met the standard for reconsideration. It has also failed to make a *prima facie* case that WTCI intended to deceive the Commission or is otherwise unqualified to be a Commission licensee. Finally, Utopian has failed to show any error in the Bureau's public interest analysis of the Assignment Application. We therefore deny Utopian's Petition.

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Utopian Wireless Corporation on April 15, 2009 IS DENIED.

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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief, Wireless Telecommunications Bureau

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Possession, Summit Wireless, LLC, Debtor-in-Possession, and Summit Wireless Liquidating Trust, *Memorandum Opinion and Order*, 19 FCC Rcd 23759, 23768-69 (WTB 2004); *citing LaRose v. FCC*, 494 F.2d 1145, 1150 (D.C. Cir. 1974).