

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

In the Matter of)
SPECTRUM NETWORKS GROUP, LLC)
Petition for Orders to Show Cause) Call Signs WQUI888, WPUC290, WQVW552,
WPJZ221, WPKT872, WPUV824, WQTB335,
WQTC271, WPEY402, WQVN203,
WQVX521, WNJL371 , WNQL213,
WQTE755, WQTG697, WQTG700,
WPPG985, WQUV855, WPVI804, WQVE909,
WQUA702, WQUT209, and WQUW935

ORDER

Adopted: August 11, 2016

Released: August 12, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a petition filed by Spectrum Networks Group, LLC (SNG) seeking a) revocation of the above-captioned 896-901/935-940 MHz (900 MHz) Business/Industrial/Land Transportation (B/ILT) licenses on the grounds that the licensees are using the B/ILT channels to provide Specialized Mobile Radio (SMR) service, and b) decertification of the Part 90 frequency coordinator that coordinated certain applications at issue.1 As discussed below, we deny the petition.

II. BACKGROUND

2. The 900 MHz band consists of channels that alternate between SMR blocks licensed geographically and assigned by competitive bidding, and B/ILT blocks in which channels are assigned on a site-by-site basis.2 B/ILT eligibility is generally limited to entities engaged in commercial, educational, medical, or similar activities, or entities providing communications service to their own B/ILT-eligible affiliate.3 Section 90.617(c) of the Commission’s rules provides that SMR systems, which are defined as those “in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under this part, Federal Government entities, and individuals,”4 will not be authorized on 900 MHz B/ILT channels.5 900 MHz B/ILT licensees may, however, share their spectrum with other B/ILT eligibles on a non-profit, cost-shared basis,6 or convert their licenses to commercial authorizations and/or assign their

1 Petition of Spectrum Networks Group, LLC, for Orders to Show Cause (filed June 26, 2015) (Petition).

2 See 47 CFR §§ 90.613, 90.617(c), (f).

3 See 47 CFR §§ 90.33(a), 90.35(a).

4 See 47 CFR § 90.7.

5 See 47 CFR § 90.617(c).

6 See 47 CFR §§ 90.179 introductory paragraph, (e), 90.603(b).

licenses to SMR entities.⁷

3. SNG requests the initiation of proceedings to revoke licenses for 900 MHz B/ILT channels granted recently⁸ to the following entities, on the grounds that the licensees do not use the stations for private, internal communications, but rather provide commercial service to third parties: 5G Properties, LLC (5G) (Call Sign WQUI888), Clark Wireless Inc. (Clark) (WQVW552), Classic Ventures Diversified, Inc. (Classic) (WPJZ221), Communications Unlimited (CU) (WPUV824), Creative Communications Sales and Rentals, Inc. (Creative) (WQTB335), Dailey and Wells Communications (DW) (WQTC271), DB Network Communications (DB) (WPEY402), ESP Wireless Technologies (ESP) (WQVN203, WQVX521), Mobile Relay Associates (MRA) (WNJL371), Allen Pooley (WPUC290), Radio Unlimited (RU) (WQTE755, WQTG697, WQTG700), Randall Schmitt (WNQL213), TaxiStuff, LLC (WQVE909), Tri-Electronics (WQUA702), Ruben Vazquez (WPPG985), and Vegas Wireless (WQUT209, WQUW935).⁹ SNG also seeks decertification of frequency coordinator Enterprise Wireless Alliance (EWA), based on its handling of applications regarding 5G's station.¹⁰ MRA,¹¹ TaxiStuff,¹² and EWA¹³ filed oppositions to the petition. SNG filed a reply.¹⁴ In addition, the Wireless Telecommunications Bureau's Mobility Division (Division), acting pursuant to section 308(b) of the Communications Act of 1934, as amended,¹⁵ sent inquiry letters seeking information regarding each licensee's B/ILT eligibility and whether (and, if so, how) it provided communications services to third parties.¹⁶

III. DISCUSSION

4. As explained below, we conclude that SNG has not demonstrated that any of the licenses at issue should be revoked.¹⁷ SNG's petition is based largely on speculation and incomplete facts, and is

⁷ See 47 CFR § 90.621(f).

⁸ In 2013, SNG filed applications for 900 MHz B/ILT channels that ultimately were dismissed because SNG was not B/ILT-eligible and did not demonstrate that a waiver was warranted. See *Spectrum Networks Group, LLC*, Order, 30 FCC Rcd 3509 (WTB MD 2015), review pending. SNG states that its petition addresses only licenses that were granted after it filed its applications. See Petition at 3. As pointed out by some of the licensees, however, see, e.g., Opposition of Mobile Relay Associates to "Petition for Orders to Show Cause" at 3 (filed July 8, 2015) (MRA Opposition), many of the licenses at issue were initially granted before then.

⁹ Petition at 8-17. SNG also requests revocation of licenses held by Commenco, Inc. (WPKT872), Scramjet Development (WQUV855), and Specialty Communications (WPVI804) but those licenses subsequently were canceled. See FCC File Nos. 0006880847 (filed July 20, 2015) (WPKT872), 0006955153 (filed Sept. 22, 2015) (WPVI804), 0006985865 (filed Oct. 15, 2015) (WQUV855).

¹⁰ Petition at 19-20.

¹¹ MRA Opposition.

¹² Letter from Linda J. Harmon, TaxiStuff, LLC, to Marlene Dortch, Secretary, FCC (July 13, 2015) (TaxiStuff Opposition).

¹³ Partial Opposition of Enterprise Wireless Alliance to Petition for Orders to Show Cause (filed July 9, 2015) (EWA Opposition).

¹⁴ Reply in Support of Petition for Orders to Show Cause of Spectrum Networks Group, LLC (filed July 21, 2015) (Reply).

¹⁵ 47 U.S.C. § 308(b).

¹⁶ The letters were dated August 31, 2015. Due to an administrative error, there was a delay in mailing some of the letters. Licensees that received the letters late were granted extensions of time to respond.

¹⁷ MRA argues in its opposition that SNG lacks standing. See MRA Opposition at 1-2. We agree with SNG, however, that the Petition is an informal request for Commission action pursuant to section 1.41 of the Commission's rules, 47 CFR § 1.41, for which there is no formal standing requirement. See SNG Reply at 4-5.

contradicted by important information provided by the various licensees subject to Commission rules prohibiting misrepresentation or omission of material facts. Nor has SNG provided grounds to decertify EWA.

5. *License Revocation Requests.* SNG divides the licensees into two groups: “Licensees Whose Applications Facially Demonstrate Service to Third Parties”¹⁸ and “Licensees That Appear to Offer Services to Others without Disclosing Such Plans.”¹⁹ It challenges the “Licensees Whose Applications Facially Demonstrate Service to Third Parties,” based largely on the licenses’ description of the licensees’ eligibility. As to this group, SNG’s petition is based on the premise that the licensees have “stated openly that they will use their licenses to provide services to others.”²⁰ But as noted above, 900 MHz B/ILT licensees are allowed to provide service to others. Specifically, they may provide service to other B/ILT eligibles on a non-profit, cost-shared basis, so the fact that a license indicates, *e.g.*, that “communications service will be offered to Part 90 eligibles”²¹ or that the licensee provides “radio service to private users”²² or “rental communications”²³ does not by itself demonstrate that the licensee is providing a prohibited SMR service on B/ILT channels. SNG provides no information, but only speculation, regarding whether these licensees provide service to third parties on a non-profit or for-profit basis. Moreover, the licensees generally contradict SNG’s assertions.²⁴ Some licensees specify in their response to the Division’s inquiry that they provide service on a cost-shared basis,²⁵ and others respond that, notwithstanding the eligibility description on the license, the station is used only for private, internal communications.²⁶ In addition, the CU and Schmitt licenses were converted to commercial authorizations before SNG filed its petition.²⁷ In the face of these licensees’ statements, SNG’s speculation does not present sufficient grounds to merit initiation of revocation proceedings.

¹⁸ *I.e.*, Classic, CU, Creative, Pooley, RU, Schmitt, Tri-Electronics, and Vazquez.

¹⁹ *I.e.*, 5G, Clark, DW, DB, ESP, MRA, TaxiStuff, and Vegas Wireless.

²⁰ *See* Petition at 8.

²¹ RU (WQTE755, WQTG697, WQTG700).

²² Vazquez (WPPG985).

²³ Tri-Electronics (WQUA702).

²⁴ We give the licensees’ factual statements, provided by knowledgeable sources and under threat of penalty in the case of misrepresentation or material omission, greater weight than SNG’s speculative allegations.

²⁵ *See* Letter from Doug Sinclair, Classic Ventures Diversified Inc. dba Rapid Communications, to Paul Moon, FCC at 1 (Oct. 21, 2015); Letter from Elizabeth R. Sachs, Counsel to Creative, to Paul Moon, FCC at 2 (Oct. 13, 2015); E-mail from Terry Mack, Radio Unlimited, to Paul Moon, FCC (Sept. 30, 2015, 2:10 p.m.); *see also* FCC File Nos. 0006929078 (filed Aug. 27, 2015, amended Apr. 18, 2016), 0006928466 (filed Aug. 26, 2015, amended Apr. 18, 2016), 0006937286 (filed Sept. 10, 2015, amended Apr. 18, 2016) (filed by RU to modify the eligibility description to specify that “licensee provides service to Part 90 eligibles on a non-profit, no-cost basis”).

²⁶ *See* Letter from Allen Pooley to Federal Communications Commission at 1 (received Sept. 28, 2015) (also noting that his company Ranch Communications, the entity that SNG suggested was using Pooley’s station to provide communications service to third parties, is a wireless internet service provider that operates on unlicensed spectrum); Letter from Ruben Vazquez, President, Borderland Communications, to Federal Communications Commission (Oct. 10, 2015).

²⁷ *See* FCC File No. 0002180373, Public Interest Statement (filed May 31, 2005) (assigning license for Call Sign WPUV824 from Star Crystal Communications, Inc., to FCI 900 Inc., a wholly-owned subsidiary of Nextel Communications, which reported it would incorporate the frequencies into its SMR system; FCI 900 Inc. assigned the license to Communications Unlimited in 2007, *see* FCC File No. 0003235441 (filed Dec. 6, 2007)); FCC File No. 0006740242 (filed Apr. 6, 2015) (modifying Schmitt’s license for Call Sign WNQL218 from Business to SMR).

6. We address the “Licensees That Appear to Offer Services to Others without Disclosing Such Plans” individually, below.

7. 5G. The basis for SNG’s assertion that 5G offers service to third parties is essentially that Golden State Communications, Inc. (Golden State), acknowledged that it was not an eligible B/ILT licensee by canceling its license for Station WQTY741 after SNG raised questions,²⁸ that 5G is the “apparent alter ego” of Golden State, and that 5G under Call Sign WQUI888 continued the ineligible activities in which SNG believes Golden State was engaged. In support of the idea that 5G and Golden State are commonly controlled, SNG asserts that one of the contacts for Golden State (Gary Carroll) and the contact for 5G (Elizabeth Carroll) “appear to be married.”²⁹ SNG offers no information regarding how 5G uses Station WQUI888. Even assuming that the principals of 5G also control Golden State, such common control does not demonstrate that the activities of 5G are not B/ILT-eligible, or that 5G provides for-profit communications services to third parties. SNG has not demonstrated grounds for initiation of proceedings to revoke the license for Station WQUI888.

8. Clark. SNG challenges Clark’s license by asserting that Clark’s website “makes it clear that the core business of Clark Wireless is to provide rental radio and wireless services to others.”³⁰ In response to the Division’s inquiry, Clark states that it uses Station WQVW552 to coordinate the activity of its employees, and not for providing communications to third parties.³¹ We note that Clark holds more than thirty Part 90 licenses other than Station WQVW552, the great majority of which authorize commercial service to third parties. Clark can provide wireless radio services to others using those stations, while using Station WQVW552 for its private, internal communications. SNG has not demonstrated grounds for initiation of proceedings to revoke the license for Station WQVW552.

9. DW. DW was granted a license for Station WQTC271 in January 2014,³² and converted it from B/ILT to SMR use later that year.³³ Based on this timing and the large number of authorized mobile units, SNG suggests that DW never used the station for B/ILT purposes and “the objective may have been to serve third parties from the start.”³⁴ The Commission expressly declined to impose a holding period before a 900 MHz B/ILT license could be converted to commercial use,³⁵ so the fact that the license was modified ten months after it was granted does not demonstrate any impropriety. Moreover, DW explains in its reply to the Division’s letter that it constructed and used the station to provide constant monitoring of and communication with hundreds of communications sites and networks that it oversees and maintains for its customers, as well as for internal dispatch communications between employees, but not for third-party communications.³⁶ Based on the record before us, we conclude that SNG has not demonstrated grounds for initiation of proceedings to revoke the license for Station WQTC271.

²⁸ See Letter from Pantelis Michalopoulos and Christopher Bjornsen, Counsel to SNG, to Marlene H. Dortch, Secretary, FCC (May 22, 2014) (viewable under application FCC File No. 0006249956).

²⁹ See Petition at 11-12.

³⁰ See *id.* at 16-17.

³¹ See Letter from Aaron Clark, Clark Wireless, to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-2 (Oct. 27, 2015).

³² See FCC File No. 0005956677 (filed Sept. 24, 2013).

³³ See FCC File No. 0006431744 (filed Aug. 20, 2014).

³⁴ See Petition at 14.

³⁵ See *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15128, para. 337 (2004).

³⁶ See Letter from Matthew J. Platche, Counsel to DW, to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-3 (Oct. 13, 2015).

10. DB. DB states in its response to the Division that it provides service on Station WPEY402 on a non-profit, cost-shared basis.³⁷ SNG's inferences based on the number of authorized mobile units and the fact that the license contact address is a communications company also owned by DB's principal³⁸ do not demonstrate grounds for initiation of proceedings to revoke the license for Station WPEY402.

11. ESP. SNG filed its petition seeking revocation of ESP's licenses for Stations WQVN203 and WQVX521 shortly after the licenses were granted and before either station had been constructed, so there was no basis at that time for SNG's "questions as to whether ESP Wireless is truly using its licenses for internal use only."³⁹ ESP states in response to the Division's inquiry that the licenses were obtained for private, internal communications in support of planned business operations.⁴⁰ SNG has not demonstrated grounds for initiation of proceedings to revoke the licenses for Stations WQVN203 and WQVX521.

12. MRA. SNG notes that MRA offers communications services to Part 90 eligibles, which, according to SNG, "mak[es] it likely that [MRA] is serving third parties with its license" for Station WNJL371.⁴¹ MRA explains that it offers digital communications services, but Station WNJL371 is an analog station that MRA acquired for use by its own personnel and contractors.⁴² In light of the information provided by MRA, SNG's speculation does not provide grounds for initiation of proceedings to revoke the license for Station WNJL371.

13. TaxiStuff. SNG filed its petition seeking revocation of TaxiStuff's license for Station WQVE909 before the station had been constructed, so there was no basis at that time for SNG's assertion that "[TaxiStuff] is likely providing the radios to others to use them instead of using them internally."⁴³ TaxiStuff explains that it obtained the license for private, internal communications in support of its business of providing goods and services for taxicabs.⁴⁴ SNG has not demonstrated grounds for initiation of proceedings to revoke the license for Station WQVE909.

14. Vegas Wireless. The licenses of Vegas Wireless, which describes itself as a two-way radio sales and service company, for Stations WQUT209 and WQUW935 authorize up to 1,400 mobile units in San Diego. SNG notes that Vegas Wireless's website does not identify San Diego as an area where the company offers service, and concludes, "It is unclear how Vegas Wireless, which does not appear to have any operations in San Diego, could possibly use 1,400 radios for its internal needs in that market."⁴⁵ Again, SNG offers speculation rather than firm evidence that Vegas Wireless is providing SMR service, and that speculation is countered by Vegas Wireless. That Vegas Wireless does not appear to offer communications service in San Diego does not support SNG's argument that Vegas Wireless is using

³⁷ See Letter from Lonnie R. Danchik, President, DB, to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 2 (Sept. 25, 2015).

³⁸ See Petition at 15.

³⁹ See *id.* at 16. We also note that SNG misstated the authorized location as Las Vegas, when the licenses are for sites in Laughlin, Nevada.

⁴⁰ See Letter from Robert F. Barcal to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-2 (Sept. 30, 2015).

⁴¹ See Petition at 16.

⁴² See MRA Opposition at 3; Letter from Mark J. Abrams to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-2 (Sept. 30, 2015).

⁴³ See Petition at 15.

⁴⁴ See TaxiStuff Opposition at 1-2; Letter from Linda J. Harmon, TaxiStuff, LLC, to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-2 (Sept. 23, 2015).

⁴⁵ See Petition at 13 (footnote omitted).

these stations to provide SMR service in San Diego. In response to the Division's inquiry, Vegas Wireless states that it uses the stations only for private, internal communications and has never used them to provide communications services to third parties.⁴⁶ Based on the record before us, we conclude that SNG has not demonstrated grounds for initiation of proceedings to revoke the license for Stations WQUT209 and WQUW935.

15. *Petition for Decertification of EWA Frequency Coordination Authority.* SNG asserts that EWA colluded with the principals of 5G and Golden State to enable them to retain the B/ILT channels originally assigned to Golden State despite Golden State's ineligibility, by improperly coordinating the 5G application while the channels were still licensed to Golden State.⁴⁷ None of this is supported by the record. EWA coordinated the 5G application on June 12, 2014 – *after* Golden State's license for Station WQTY741 was canceled on June 11, 2014. In addition, as noted above, SNG has not shown that 5G does not engage in any B/ILT-eligible activities.⁴⁸ Moreover, EWA explains that Mr. Carroll indicated that 5G was a building maintenance company.⁴⁹ We agree with EWA that frequency coordinators are charged with ensuring that the application is technically correct but not with investigating and verifying the applicant's eligibility statement.⁵⁰ SNG has not demonstrated grounds for decertifying EWA as a frequency coordinator.

IV. CONCLUSION AND ORDERING CLAUSES

16. SNG's petition is based largely on speculation, conjecture, and overlooking information set forth in the Commission's Universal Licensing System. This does not constitute a basis for Commission action.⁵¹ Moreover, SNG's conclusions are generally contradicted by the information provided by the holders of the licenses at issue. Based on the record before us, we conclude that SNG has not demonstrated grounds for initiation of proceedings to revoke any of the challenged licenses, or to decertify EWA as a Part 90 frequency coordinator. We therefore deny the petition. This action is without prejudice to the filing of a sufficient complaint providing evidence that any of the stations at issue is being operated in violation of the Commission's rules, or to further investigation by Commission staff.

17. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 312(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 312(a), and section 1.41 of the Commission's rules, 47 CFR § 1.41, the Petition for Orders to Show Cause filed by Spectrum Networks Group on June 26, 2015, IS DENIED.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

⁴⁶ See Letter from Thomas K. Kurian to Paul Moon, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division at 1-2 (Sept. 30, 2015).

⁴⁷ See Petition at 19-20 (citing 47 CFR § 1.934).

⁴⁸ See *supra*, para. 7.

⁴⁹ See EWA Opposition at 4.

⁵⁰ See *id.* at 2-3 (citing *Frequency Coordination in the Private Land Mobile Radio Services*, Report and Order, 103 F.C.C. 2d 1093, 1103, para. 20 (1986)).

⁵¹ *Abundant Ephesian 320 Spectrum, LLC*, Order and Order on Reconsideration, 30 FCC Rcd 7240, 7243, para. 7 (WTB MD 2016).

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