

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

In the Matter of )  
 )  
NEVADA READY MIX CORPORATION, INC. ) File No. 0002753324  
 )  
Licensee of Station WRU657, Las Vegas, Nevada )

**ORDER ON RECONSIDERATION AND ORDER PROPOSING MODIFICATION**

**Adopted: April 15, 2009**

**Released: April 16, 2009**

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

1. *Introduction.* By this *Order on Reconsideration and Order Proposing Modification*, we dismiss a petition for reconsideration of the grant of the above-captioned application to modify the license of Nevada Ready Mix Corporation, Inc. (Ready Mix) for 800 MHz Business/Industrial/Land Transportation Pool Station WRU657, Las Vegas, Nevada filed by Pappammal Kurian (Kurian) on November 5, 2007.<sup>1</sup> In response to a request filed by Kurian on March 17, 2008,<sup>2</sup> however, we initiate a proceeding to modify the license to change the radio service code from YJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Trunked) to GJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Conventional).

2. *Background.* In the 800 MHz band, conventional private land mobile radio systems are licensed on a shared basis, and licensees must monitor the channels for communications in progress in order to avoid causing harmful interference to communications by co-channel licensees.<sup>3</sup> Trunked stations are licensed on an exclusive basis, and licenses are not required to monitor prior to transmitting.<sup>4</sup>

3. Kurian is the licensee of Station WNMR238, which is authorized to operate on frequency pair 811/856.3875 MHz using base stations at Henderson and Las Vegas, Nevada. Ready Mix's Station WRU657 is authorized to operate a base station on that and other channels at Sunrise Mountain, approximately twelve miles from each of Station WNMR238's Nevada base stations. Stations WRU657 and WNMR238 both were authorized to operate as conventional systems.

4. On October 4, 2006, however, the Commission granted Ready Mix's application to change the radio service code for Station WRU657 from GJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Conventional) to YJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Trunked).<sup>5</sup> The application was coordinated by the PCIA – The Wireless Infrastructure

<sup>1</sup> Letter from Pappammal Kurian, Spectrum Wireless LLC, to FCC (received Nov. 5, 2007) (Petition).

<sup>2</sup> Opposition to Amendment of Call Sign WRU657, Request to Delete Frequency 856/811.3875 from Call Sign WRU657 and Initiate License Revocation Proceedings Against Nevada Ready Mix Corporation (filed March 17, 2008) (Request).

<sup>3</sup> See 47 C.F.R. § 90.403(e).

<sup>4</sup> See, e.g., Amendment of Part 90 of the Commission's Rules to Permit Exclusive-Use Systems to Conduct Secondary Fixed Signaling and Alarm Operations without Conforming to the Provision of Section 90.235, *Report and Order*, PR Docket No. 91-322, 7 FCC Rcd 4754, 4755 n.11 (1992) ("Trunked non-SMR systems above 800 MHz have exclusive use of their assigned spectrum in their respective geographic areas.").

<sup>5</sup> FCC File No. 0002753324 (filed Sept. 15, 2006, amended Sept. 29, 2006).

Association (PCIA).<sup>6</sup> On November 5, 2007, Kurian requested that the Commission reconsider the grant (Petition).<sup>7</sup> On March 17, 2008, Kurian requested that the Commission terminate Ready Mix's authorization to use frequency pair 811/856.3875 MHz in its centralized trunked system (Request).<sup>8</sup>

5. On March 21, 2008, the Wireless Telecommunications Bureau's Mobility Division (Division) directed PCIA to review its records, and demonstrate whether the coordination of Ready Mix's application was proper.<sup>9</sup> The Division stated that it appeared that because Ready Mix did not have exclusive use of frequency pair 811/856.3875 MHz in the Las Vegas area, Ready Mix's application to modify the license for Station WRU657 to authorize trunked operations may have been coordinated in error.<sup>10</sup> The Division therefore required PCIA to demonstrate that the coordination was in compliance with the Commission's rules and procedures or, if the coordination was defective, propose a resolution of the problem.<sup>11</sup> The Division also stated that license modification under Section 316(a)(1) of the Communications Act of 1934, as amended (the Act), might provide the appropriate vehicle for resolving the matter if Ready Mix were unwilling to modify its license voluntarily.<sup>12</sup>

6. On April 17, 2008, PCIA responded to the Division, indicating that the coordination was defective because Station WRU657 did not have exclusive use of the frequency pair and the coordinator assumed incorrectly that the affected Station WNMR238 sites "were unprotected secondary sites and therefore not subject to the provisions for protection."<sup>13</sup> PCIA proposed that the matter be resolved by modifying the station class code for Station WRU657 to reflect conventional operation.<sup>14</sup>

7. *Discussion.* Although Kurian did not caption her Petition as a petition for reconsideration, we will treat it as such because it clearly seeks further review of the action granting the application.<sup>15</sup> We dismiss the Petition as untimely. Section 1.106(f) of the Commission's Rules requires that a petition for reconsideration be filed within thirty days from the date of public notice of the

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<sup>6</sup> PCIA Frequency Coordination No. 20062480509.

<sup>7</sup> See Petition at 1. On January 28, 2008, Kurian requested expedited action on the Petition. See Letter from Pappammal Kurian, Spectrum Wireless LLC, to Secretary, Federal Communications Commission (received Jan. 28, 2008).

<sup>8</sup> See Request at 3. On March 26, 2008, Ready Mix filed an opposition and a motion to dismiss the Request. See Nevada Ready Mix Corporation, Opposition and Motion to Dismiss (filed March 26, 2008) (Opposition).

<sup>9</sup> See Letter dated March 21, 2008, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Don Andrew, Personal Communications Industry Association.

<sup>10</sup> See *id.* at 2.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See Letter dated April 17, 2008, from Don Andrew, Director, Frequency Coordination Services, PCIA, to Stana Kimball, Wireless Telecommunications Bureau, at 1 (PCIA Letter). On May 5, 2008, Ready Mix filed comments to PCIA letter, incorporating the arguments raised in its Opposition. See Letter dated May 5, 2008, from Nathaniel J. Hardy, Esq., Wood, Maines & Nolan, P.C., to Stana Kimball, Wireless Telecommunications Bureau. On May 15, 2008, the Commission received Kurian's response to Ready Mix's letter. See Letter dated May 8, 2008, from Pappammal Kurian to Stana Kimball, Wireless Telecommunications Bureau. Additional correspondence was received from Kurian on July 14 and August 20, 2008. See Letter from Pappammal Kurian to Secretary, FCC (received July 14, 2008); Letter dated August 10, 2008, from Pappammal Kurian to Secretary, FCC (received Aug. 20, 2008).

<sup>14</sup> See PCIA Letter at 2.

<sup>15</sup> See, e.g., Jack Gerritsen, *Memorandum Opinion and Order*, 20 FCC Rcd 4273, 4273 n.3 (EB 2005); Redlands Municipal Airport, *Order on Reconsideration*, 20 FCC Rcd 14782, 14782 ¶ 4 (WTB PSCID 2005).

Commission's action.<sup>16</sup> Thus, the deadline for filing a petition for reconsideration of the October 4, 2006 grant of Ready Mix's modification application was November 3, 2006. Kurian failed to meet this deadline, and does not allege any "extraordinary circumstances" to excuse her untimely filing.<sup>17</sup>

8. Ready Mix argues that Kurian's Request also should be dismissed as untimely.<sup>18</sup> We disagree. Requests for modification pursuant to Section 316 of the Act are not subject to the same deadlines or other procedural requirements as petitions for reconsideration.<sup>19</sup>

9. Moreover, Ready Mix does not dispute that the October 4, 2006 grant of its modification application was based on defective coordination. To resolve this matter, we will utilize Section 316(a)(1), which permits us to modify a station license if the action will promote public interest, convenience, and necessity.<sup>20</sup> Specifically, we propose to modify Ready Mix's license for Station WRU657 by changing the radio service code for Station WRU657 from YJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Trunked) to GJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Conventional). We note that changing the radio service code will serve the public interest by preventing harmful interference to Station WNMR238, while restoring Ready Mix to the status it held prior to the grant of the defective application. It would not unduly disrupt the operations of Station WRU657, as it would only require Station WRU657 to continue to monitor the shared channel before transmitting.

10. In accordance with Section 1.87(a) of the Commission's Rules,<sup>21</sup> we will not issue a modification order until Ready Mix has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, Ready Mix must, within thirty days of the release date of this *Order on Reconsideration and Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be mailed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554, Attn: Stana Kimball.<sup>22</sup> If no protest is filed, Ready Mix will have waived its right to protest the modification and will be deemed to have consented to the modification.

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration submitted by Pappammal Kurian on November 5, 2007 IS

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<sup>16</sup> 47 C.F.R. § 1.106(f). Section 1.4(b)(5) considers "the date appearing on the document (e.g. mailed, telegraphed, etc.) to persons affected by the action" to mean the date of public notice of the Commission's action for the purposes of computing the deadline for, *inter alia*, filing of a petition for reconsideration pursuant to Section 1.106. 47 C.F.R. § 1.4(b)(5).

<sup>17</sup> See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (narrowly construing the judicially created "extraordinary circumstances" exception to statutory time limit for filing petitions for reconsideration).

<sup>18</sup> See *Opposition* at 3-5.

<sup>19</sup> See *Pacific Gas and Electric Co., Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22764-65 ¶ 10 (2003); *California Metro Mobile Communication, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 22974, 22975 ¶ 6 (2002), *aff'd*, 365 F.3d 38 (D.C. Cir. 2004).

<sup>20</sup> 47 U.S.C. § 316(a)(1).

<sup>21</sup> 47 C.F.R. § 1.87(a).

<sup>22</sup> The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, Public Notice*, 16 FCC Rcd 22165 (2001).

DISMISSED.

12. IT IS FURTHER ORDERED that the request filed by Pappammal Kurian on March 17, 2008 IS GRANTED to the extent set forth herein, and the motion to dismiss filed by Nevada Ready Mix Corporation on March 26, 2008 IS DENIED.

13. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Station WRU657 held by Nevada Ready Mix Corporation, BE MODIFIED by changing the radio service code from YJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Trunked) to GJ (Business/Industrial/Land Transportation, 809-824/854-869 MHz, Conventional).

14. IT IS FURTHER ORDERED that this *Order on Reconsideration and Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to: (1) Wood, Maines & Nolan, P.C., 4121 Wilson Blvd., Suite 101, Arlington, VA 22203-4143, Attn: Barry D. Wood, Esq. and Nathaniel J. Hardy, Esq.; (2) Nevada Ready Mix Corporation, 601 West Bonanza Road, Las Vegas, NV 89106, Attn: Ron Reed; and (3) Rebel Communications, LLC, 7265 S. Dean Martin Drive, #170, Las Vegas, NV 89118, Attn: Cody K. Whipple.

15. 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 COMMUNICATION COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau