

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

In the Matter of)	
)	
PAGING SYSTEMS, INC.)	
)	
Applications for Assignment of Authorization for Stations WQMF673 and WPSZ434)	File Nos. 0004757182 and 0004800336
)	
Application to Modify License for Station WPDD838)	File No. 0005068796
)	
DD INCORPORATED)	
)	
Application to Renew License for Station WPSZ434)	File No. 0004825560
)	

SECOND ORDER ON RECONSIDERATION AND ORDER ON RECONSIDERATION

Adopted: January 25, 2013

Released: January 25, 2013

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

1. *Introduction.* We have before us two petitions for reconsideration filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, V2G LLC, and Warren C. Havens (collectively Petitioners). The first petition seeks reconsideration of an *Order and Order on Reconsideration*¹ by the Wireless Telecommunications Bureau's Mobility Division (Division) that denied Petitioners' petitions filed in opposition to the applications of Paging Systems, Inc. (PSI) to assign its licenses for 800 MHz Specialized Mobile Radio Station WPSZ434 and Industrial/Business Pool Station WQMF673 to Crystal SMR, Inc. (Crystal), and the application of Crystal's assignee DD Incorporated (DD) to renew the license for Station WPSZ434.² The second petition seeks reconsideration of the Division's *Order*³ that denied Petitioners' petition to deny PSI's application modify its license for Paging Station WPDD838.⁴ For the reasons stated below, we deny both petitions.

2. *Background.* PSI's applications to assign to Crystal the licenses for Station WQMF673, with authorized locations at Mt. Vaca, Loma Ridge, and Twin Peaks, California, and Station WPSZ434, with authorized locations at Mt. Diablo and Grizzly Peak, California, were granted in 2011. Petitioners filed a separate petition for reconsideration of each grant. Crystal assigned the license for Station WPSZ434 to DD, which filed an application to renew the license. Petitioners filed a petition to dismiss or deny the renewal application.

¹ Paging Systems, Inc., *Order and Order on Reconsideration*, 27 FCC Rcd 6043 (WTB MD 2012) (*Order and Order on Reconsideration*).

² Petition for Reconsideration Based on New Facts, and Petition for Reconsideration (filed July 5, 2012) (PFFR). PSI and DD filed oppositions. Petitioners filed a reply.

³ Paging Systems, Inc., *Order*, 27 FCC Rcd 13560 (WTB MD 2012) (*Order*).

⁴ Petition for Reconsideration, and Petition for Reconsideration Based on New Facts, and Request under Section. 1.2 (filed Dec. 7, 2012) (PFR). PSI filed an opposition. Petitioners filed a reply.

3. In all three petitions, Petitioners asserted that satellite images of the authorized locations showed the licensed coordinates to be vacant land or paved roadways, which according to Petitioners demonstrated that the stations were not constructed so the licenses automatically terminated and thus could not be assigned or renewed. Petitioners also alleged misconduct by PSI with respect to other licenses, which according to Petitioners showed that PSI lacked the character and fitness to be a Commission licensee.

4. PSI and DD responded that the stations were properly constructed, but the location information on the licenses was less precise than could be provided by more recent technology. Because there was a small discrepancy between the coordinates identified by PSI and the coordinates identified by DD for Station WPSZ434's Grizzly Peak location, the Division in February 2012 directed them, pursuant to Section 308(b) of the Communications Act of 1934, as amended,⁵ to provide additional information concerning Stations WPSZ434 and WQMF673. In March, they provided additional documentary and photographic evidence regarding the stations, and DD explained that it had received the discrepant coordinates from a third party rather than from independent measurements that differed from PSI's measurements. Petitioners replied that the responses were not satisfactory and properly substantiated.

5. Also in February 2012, PSI filed an application to modify its license for Station WPDD838, with authorized locations at Grizzly Peak and Burlingame, California, by, *inter alia*, changing the coordinates, site elevation, and antenna height for the Grizzly Peak location (which was licensed for the same site as Station WPSZ434's Grizzly Peak location). PSI explained that the antenna has not been physically moved, and the modification was requested only to correct the site information, which had been recalculated using newer, more accurate technology. Petitioners filed a petition to deny the application. They argued that the application must be dismissed or denied or the license investigated for failure to construct and operate as authorized, in light of the Division's then-outstanding inquiry concerning Stations WQMF673 and WPSZ434. Petitioners also alleged misconduct by PSI with respect to other licenses, which according to Petitioners showed that PSI lacked the character and fitness.

6. In June 2012, the Division denied Petitioners' petitions regarding Stations WQMF673 and WPSZ434, stating,

Petitioners' assertion that the satellite images demonstrate that the stations were not properly constructed is meritless. The images, with antenna structures visible near the licensed coordinates, actually support the licensees' representations that the stations were constructed at locations within a reasonable margin of error for determining geographic coordinates using older technology. Occasional minor discrepancies in license coordinates due to the employment of later technology that yields more accurate results are not unprecedented, and are not grounds for concluding that the authorization terminated due to failure to construct⁶

The Division rejected Petitioners' criticisms of PSI's and DD's responses to the Division's inquiry, stating, "Petitioners' arguments are speculation and conjecture about how the submitted responses could be incorrect, falsified, or actually mean something completely different. Petitioners offer no evidence to substantiate these claims."⁷ Finally, the Division declined to address Petitioners' arguments concerning PSI's character and fitness to be a Commission licensee, noting that "the Commission has held that Petitioners' allegations against PSI's character qualifications that relate to its other licenses and are not

⁵ 47 U.S.C. § 308(b).

⁶ *Order and Order on Reconsideration*, 27 FCC Rcd at 6045 ¶ 5 (footnote omitted).

⁷ *Id.* at 6044 n.10.

the subject of the proceeding at issue are more appropriately addressed elsewhere.”⁸

7. In November 2012, the Division denied Petitioners’ petition regarding Station WPPD838. It noted that it had resolved Petitioners’ claims regarding Stations WQMF673 and WPSZ434 in favor of the licensees, reiterated that the satellite images of the Grizzly Peak site corroborated that the facility was constructed, and again declined to address Petitioners’ arguments concerning PSI’s character and fitness.⁹

8. *Discussion.* Some of Petitioners’ arguments rely on information that Petitioners did not submit to the Division. A petition for reconsideration that relies on facts or arguments not submitted to the designated authority may be granted only if the new information relates to events which occurred or circumstances which changed since the petitioner’s last opportunity to present such matters, the petitioner could not reasonably have known the information prior to the last opportunity to present such matters, or the public interest requires consideration of the new information.¹⁰

9. First, Petitioners present correspondence from the State of California stating that a preliminary records search had not discovered any documents relating to operation by PSI, Crystal, or DD at Mt. Diablo State Park.¹¹ According to Petitioners, this indicates that Station WPSZ434’s Mt. Diablo site was not constructed and operational.¹² Assuming *arguendo* that information discovered through a document request that Petitioners did not make until after their last opportunity to present such matters should be deemed to have been previously unavailable to them,¹³ we do not find this information persuasive. The information relays a preliminary, not final, search result. Moreover, as the Division indicated in the *Order* regarding a different argument by Petitioners, the absence of records that could corroborate construction and operation of a station does not prove that the station was not constructed and operational, especially in light of other documentary and photographic evidence regarding the station.¹⁴

10. Next, Petitioners attack the sufficiency and veracity of the responses of PSI and DD to the Division’s inquiry concerning Stations WPSZ434 and WQMF673. With respect to the new arguments in this regard,¹⁵ we note that Petitioners have not explained why these could not have been presented earlier, so we decline to address them. With respect to the repeated arguments,¹⁶ we do not agree with Petitioners’ assessment of the Division’s evaluation of the evidence received in response to its inquiry. As noted previously, Petitioners’ arguments are “speculation and conjecture about how the submitted responses could be incorrect, falsified, or actually mean something completely different.”¹⁷

11. Petitioners also argue that the fact that the Division inquired regarding Stations WPSZ434

⁸ *Id.* at 6045 ¶ 6 (citing, e.g., Paging Systems, Inc., *Order on Reconsideration*, 26 FCC Rcd 16573, 16576-78 ¶¶ 7-9 (2011) (*PSI Order*)).

⁹ *Order*, 27 FCC Rcd at 13561 ¶ 4.

¹⁰ 47 C.F.R. § 1.106(c).

¹¹ PFFR at Ex. 1.

¹² *See* PFFR at 3-4.

¹³ *See* Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Order on Further Reconsideration*, WT 92-257, 24 FCC Rcd 4150, 4152 ¶ 6 (WTB MD 2009), *review denied*, *Fourth Memorandum Opinion and Order*, 25 FCC Rcd 5008 (2010), *recon. dismissed*, *Order on Reconsideration*, 26 FCC Rcd 16581 (2011), *recon. dismissed*, *Order on Reconsideration*, 27 FCC Rcd 13520 (WTB MD 2012), *recon. pending*.

¹⁴ *See Order*, 27 FCC Rcd at 13561 ¶ 4.

¹⁵ *See* PFFR at 5.

¹⁶ *See id.* at 12-13.

¹⁷ *See Order and Order on Reconsideration*, 27 FCC Rcd at 6044 n.10.

and WQMF673 demonstrates the existence of “a substantial and material question of fact”¹⁸ that must be resolved by formal hearing.¹⁹ We disagree. Section 308(b) specifically authorizes inquiries to applicants “to enable [the Commission] to determine whether such original application should be granted or denied”²⁰ While a hearing may follow from the response to a Section 308(b) inquiry, the Commission has stated that such a course is not required.²¹ Here, the Division made its determination about the construction of the stations based on the full record, including the satellite images showing towers in the close vicinity of the original coordinates as well as the received responses.

12. Finally, Petitioners argue that the Division erred in declining to address their arguments concerning PSI’s character and fitness to be a Commission licensee.²² We again note that the Commission has held that these allegations are more appropriately addressed in the proceedings relating to the licenses involved in the allegations,²³ and “strongly caution[ed] Petitioners and their related companies not to file additional misdirected pleadings of this nature.”²⁴

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration Based on New Facts, And Petition for Reconsideration filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, V2G LLC, and Warren C. Havens on July 5, 2012 IS DENIED.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration, and Petition for Reconsideration Based on New Facts, and Request under Section. 1.2 filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, V2G LLC, and Warren C. Havens on December 7, 2012 IS DENIED.

15. These actions are 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

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¹⁸ 47 U.S.C. § 309(e).

¹⁹ See PFFR at 6-11, 18; PFR at 3-5.

²⁰ 47 U.S.C. § 308(b).

²¹ See John M. Roberts, *Order*, 3 FCC Rcd 371, 371-72 ¶¶ 2-4 (1988).

²² See PFFR at 14-18; PFR at 2-3, 5-12.

²³ *PSI Order*, 26 FCC Rcd at 16576-78 ¶¶ 7-9; see also, e.g., *Touch Tel Corporation, Second Order on Reconsideration*, 27 FCC Rcd 4042, 4045 ¶ 8 (WTB MD 2012), *review pending*. Petitioners also argue that PSI has abandoned its position regarding the adjudication of allegations concerning licenses other than those at issue in a given proceeding, given that in an unrelated proceeding, PSI alleged misconduct by Petitioners with respect to licenses not at issue in that proceeding. See PFFR at 13-14; PFR at 12. Even if the PSI pleading can be so interpreted, it does not change the Commission’s holding.

²⁴ *PSI Order*, 26 FCC Rcd at 16574 ¶ 2.