

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

In the Matter of Application of)	
)	
AGS TELECOM, INC.)	FCC File No. 00003330845
)	
For Transfer of Control of Licensee of 218-219)	
MHz Service Station KIVD0004, Frequency Block)	
B, Los Angeles, California Metropolitan Statistical)	
Area (MSA))	

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 2001

Released: October 15, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On January 4, 2001, Tottenham Holdings, L.L.C. (“Tottenham”) and Spectrum IVDS, L.L.C. (“Spectrum”) filed the above-captioned application seeking to transfer control of AGS Telecom, Inc. (“AGS”), licensee of 218-219 MHz Service Station KIVD0004, Frequency Block B, Los Angeles, California Metropolitan Statistical Area (MSA) from Tottenham to Spectrum.¹ For the reasons discussed below, we dismiss the petitions to deny filed by Interactive Management Services, L.L.C. d/b/a In-Sync Interactive Management Company (“In-Sync”)² against the above-captioned application as untimely. Accordingly, we forward the AGS Application to the Licensing and Technical Analysis Branch (“Branch”), Public Safety and Private Wireless Division for processing in accordance with this *Memorandum Opinion and Order* pending resolution of a petition for reconsideration concerning this license.³

¹ See FCC File No. 00003330845 (filed Jan. 4, 2001) (“AGS Application”).

² See In-Sync Interactive Management Company, Petition to Dismiss or Deny Transfer of Control Application Regarding AGS Telecom, Inc. (filed Feb. 26, 2001) (“In-Sync Petition I”); In-Sync Interactive Management Company, Petition to Dismiss or Deny Transfer of Control Application Regarding AGS Telecom, Inc. (filed May, 9, 2001) (“In-Sync Petition II”). References to the documents in this *Order* as the “In-Sync Petitions” refer to both petitions. AGS and Spectrum filed timely oppositions to the relative petitions to deny on March 8, 2001. See AGS Telecom, Inc. Opposition to Petition to Deny (filed March 8, 2001) (“AGS Opposition”); Spectrum IVDS, Inc., Opposition to Petition to Deny (filed March 8, 2001) (“Spectrum Opposition I”); Spectrum IVDS, Inc., Opposition to Petition to Deny (filed May 17, 2001) (“Spectrum Opposition II”).

³ See Jan M. Reed and Edward M. Johnson, Petition for Reconsideration, In the Matter of Christina del Valle, New York, N.Y., Frequency Block B; Alberto E. Garza, Los Angeles, CA, Frequency Block B; Ignacio Santos de Hoyos, Boston, MA, Frequency Block A; Luz Lobaton, Houston, Texas, Frequency Block A, Applications for Licenses to Build and Operate IVDS Systems (filed Apr. 5, 1996).

II. BACKGROUND

2. Tottenham owns a fifty-one percent majority interest in AGS.⁴ On January 4, 2001, Tottenham filed the instant application seeking the Commission's consent to transfer its controlling interest in AGS to Spectrum. AGS asserts that "Spectrum is an entity that holds other 218-219 MHz licenses and has been working towards development of service in the 218-219 MHz band."⁵ Spectrum would acquire control of AGS by purchasing Tottenham's outstanding stock in AGS.⁶ The AGS Application was placed on public notice on January 24, 2001.⁷

3. In-Sync filed petitions to deny the AGS Application on February 26 and May 9, 2001. In-Sync maintains that it has a private contractual disagreement with Tottenham concerning the ownership of AGS. Accordingly, In-Sync requests that we deny or dismiss the AGS Application.⁸ Spectrum contends that we should summarily dismiss the In-Sync Petitions because they were untimely filed and because In-Sync lacks standing to file a petition to deny in this proceeding.⁹

III. DISCUSSION

4. Based on our review and analysis of the record in this proceeding, we agree with Spectrum that the In-Sync Petitions are procedurally defective. Section 1.939 of the Commission's Rules¹⁰ sets forth the requirements for petitions to deny. Section 1.939(a)(2) of the Commission's Rules states that for non-auctionable applications, petitions to deny must be filed within thirty days after the date of the public notice accepting the application for filing.¹¹ In this case, the public notice accepting the application for filing was dated January 24, 2001.¹² The deadline for filing petitions to deny was thus February 23, 2001.¹³ The In-Sync Petitions were filed on February 26, 2001 and May 9, 2001, respectively, and were therefore untimely. Moreover, In-Sync did not request a waiver or extension of the deadline for filing a petition to

⁴ See AGS Application, Exhibit 1 (Public Interest Statement).

⁵ *Id.*

⁶ See *id.*

⁷ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing, *Public Notice*, Report No. 761 (rel. Jan. 24, 2001) (*Public Notice*).

⁸ See In-Sync Petitions at 2.

⁹ See Spectrum Opposition I at 3-4. Spectrum does not raise the standing issue in response to the Second In-Sync Petition. Rather, Spectrum denounces the subsequent submission because it was untimely "filed months beyond the prescribed 30-day period," Spectrum Opposition II at 1, and "clearly constitutes the filing of a frivolous pleading and an abuse of the Commission's process." *Id.* at 3. As such, Spectrum requests that we promptly and summarily dismiss it.

¹⁰ 47 C.F.R. § 1.939.

¹¹ 47 C.F.R. § 1.939(a)(2).

¹² See *Public Notice*.

¹³ The computation of time for filing the petition to deny is calculated in accordance with 47 C.F.R. § 1.4.

deny. We therefore find the In-Sync Petitions to be untimely and subject to dismissal as procedurally defective.

IV. CONCLUSION AND ORDERING CLAUSES

5. We dismiss the petitions to deny filed against the AGS Application as untimely. As a result, we forward the AGS Application to the Branch for processing in accordance with this *Memorandum Opinion and Order*. We note, however, that the Branch may not take action on the AGS application until the outstanding reconsideration petition concerning the subject license filed by Jan M. Reed and Edward M. Johnson has been resolved.

6. Accordingly, IT IS ORDERED that pursuant to Section 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petitions to Dismiss or Deny Transfer of Control Application Regarding AGS Telecom, Inc filed by In-Sync Interactive Management Company on February 26, 2001 and May 9, 2001 ARE DISMISSED.

7. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948, the above-captioned transfer of control application filed by Tottenham Holdings, L.L.C. and Spectrum IVDS, L.L.C. (FCC File No. 00003330845) shall be processed in accordance with this *Memorandum Opinion and Order*.

8. 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau