

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

In the Matter of)	
)	
Stanacard, LLC)	WC Docket No. 12 – 18
)	
Domestic Section 214 Application Filed for)	
the Transfer of Control of Stanacard, LLC)	

OPPOSITION TO PETITION TO DENY

Stanacard, LLC ("Stanacard"), by its attorneys, hereby opposes the letter submitted on behalf of Aleksandr Palatkevich and Artur Zaytsev ("Petitioners") on February 9, 2012, in the above-captioned proceeding.

I. INTRODUCTION

On January 16, 2012, Stanacard filed a joint international and domestic application for consent for the transfer of control of a Section 214 authorized carrier ("Application"), in accordance with the Commission's rules.¹ On January 26, 2012, the Commission released a Public Notice accepting the domestic transfer of control application for streamlined processing.² On February 9, 2012, the Petitioners filed a request to deny the domestic transfer of control application ("Petition").³ The Petitioners point out that minority shares of Stanacard are the subject of two court cases pending before the Supreme Court of the State of New York, New York County, Commercial Division (the "Litigation"), and attach the complaints in each matter

¹ 47 C.F.R. § 63.04 and 63.24.

² Public Notice, Domestic Section 214 Application Filed for the Transfer of Control of Stanacard, LLC; Streamlined Pleading Cycle Established, WC Dkt. No. 12-18, rel. Jan. 26, 2012.

³ Since the submission was in the form of a letter specifically requesting that "the Commission deny the Application", it is referred to herein as a petition to deny.

along with a decision of the Court denying a motion for summary judgment in the Zaytsev matter. In these actions, Petitioners each assert a claim for a 10% membership interest in Stanacard, assertions which are at issue in the Litigation.

Other than the Litigation, Petitioners have no interest in the Application and do not raise any issues affecting the public interest. As shown below, the Petition is nothing more than a thinly veiled attempt to embroil the Commission in private litigation. In addition, the Petition fails to comply with statutory and regulatory requirements. For these and other reasons set forth below, the Commission must dismiss the Petition.⁴

II. PETITIONER'S CLAIMS INVOLVE MATTERS SUBJECT TO PRIVATE LITIGATION

Precedent clearly establishes that the Commission will not delay or deny transfer of control applications involving Section 214 authority because of private claims in litigation.⁵ Indeed, the purpose of the Act is to protect the public interest rather than to provide a forum for the settlement of private disputes.⁶ That the Petitioners are pursuing a private dispute before the Commission simply proves they are not real parties in interest. The Commission should not permit the Section 214 transfer of control process to be subverted to allow private litigants to leverage power in a private dispute. The public interest is not served, and Commission resources

⁴ Pursuant to Section 63.03 of the Commission's rules, the Application should not be removed from streamlined processing. The Petitioners fail to set forth any basis under Section 63.03(c) of the rules warranting removal from streamlined processing.

⁵ See, e.g., *In the Matter of Application of Comscape Communications, Inc. & E. Kentucky Network, LLC*, 23 F.C.C.R. 5753, 5754-55 (2008) (rejecting a petition to deny where the matters involved, which related to employment concerns, were "not relevant to the Commission's duty to determine whether the Applicants involved have demonstrated that the [applications] would serve the public interest, convenience, and necessity"); *Application of General Electric Co., Memorandum Opinion and Order*, 3 FCC Rcd. 2803, 2809-10 (1988) ("It would be premature for us to deny the proposed transfer of control or impose conditions merely on the basis of pleadings raising issues that have not yet been adjudicated.").

⁶ *United Telephone Co. of the Carolinas, Inc. v. FCC*, 559 F.2d 720, 723 (D.C. Cir. 1977) (emphasis added).

are not best spent, by airing Petitioners' private claims which are already properly pending before a court.

III. PETITIONERS FAIL TO ASSERT CLAIMS RELEVANT TO THE APPLICABLE PUBLIC INTEREST ANALYSIS

The Commission's rules require that a petition to deny "must contain specific allegations of fact sufficient to make a *prima facie* showing that ... a grant of the application would be inconsistent with the public interest, convenience and necessity".⁷ This Petition makes no showing, and certainly not a *prima facie* showing, that grant of the Application would be inconsistent with the public interest. On the contrary, using the Commission to deny (or delay) an application for a qualified applicant to further private interests is clearly inconsistent with the public interest. The Petitioners' assertions that they are each entitled to a 10% membership interest, even if true—for the sake of argument—would have no impact upon the fact that Michael Choupak was in a position to transfer a controlling interest in Stanacard to the transferee.⁸ Not only is the validity of the plaintiffs' claims in this litigation unknown (since the litigation is ongoing), it is entirely irrelevant for purposes of the Commission's public interest analysis in assessing the transfer of control Application.

⁷ 47 C.F.R. § 1.939(d); § 1.45(a).

⁸ Indeed, both complaints in the Litigation concede that Michael Choupak is, and has been, the Managing Member and controlling interest holder in Stanacard (notwithstanding the fact that he is currently neither the Managing Member nor holds a membership interest in Stanacard).

IV. PETITIONERS FAIL TO COMPLY WITH APPLICABLE PROCEDURAL REQUIREMENTS

The Commission must dismiss the Petition since it fails to comply with statutory and regulatory requirements.⁹ Petitioners are not real parties in interest; did not submit an affidavit to support factual allegations; and apparently failed to properly serve the Petition. All of these requirements are statutorily mandated and must be enforced.¹⁰

Section 309(d)(1) of the Act and Section 1.939(a)(2) of the Commission's rules govern the filing of petitions to deny, entitling "any party in interest" to file a petition to deny "any application listed in a Public Notice as accepted for filing."¹¹ Petitioners in this case are not real parties in interest. To qualify as a party in interest, a petitioner: "must make specific allegations of fact sufficient to demonstrate that grant of the challenged Application would cause the petitioner to suffer a direct injury...[and]...must establish a causal link by demonstrating that the injury can be traced to the grant [of the Application]."¹² Further, a petitioner must establish that "these injuries fairly can be traced to the challenged action, and [that] the injury would be prevented or redressed by the relief requested."¹³ In other words, a petitioner must demonstrate a

⁹ The Commission's general rules mandate immediate dismissal of procedurally deficient petitions to deny that fail to meet the statutory requirements for such petitions as set forth in Section 309(d)(1) of the Communications Act of 1934, as amended, as implemented in Section 1.939 of the Commission's rules. 47 C.F.R. § 1.939. *See also* 47 U.S.C. § 309.

¹⁰ 47 C.F.R. § 1.939(g) ("The Commission may dismiss any petition to deny that does not comply with the requirements of this section..."). *See also* 47 C.F.R. § 1.45(a).

¹¹ 47 U.S.C § 309(d)(1); 47 C.F.R. § 1.939(a)(2).

¹² *In the Matter of Application to Assign Wireless Licenses from Worldcom, Inc. to Nextel Spectrum Acquisition*, 19 F.C.C.R. 6232, 6239-40 (2004) ("Worldcom, Inc. Application").

¹³ *In Re of Commco Tech., L.L.C.*, 16 F.C.C.R. 19485, 14487 (2001).

connection between the application and its grant, and some legitimate interest in the application.¹⁴

In this case, the Petitioners ignored these requirements. Petitioners allege nothing more than the private claims that they are already asserting in the Litigation pending before the Supreme Court of the State of New York, New York County, Commercial Division. As indicated above, the Commission has no jurisdiction to consider private disputes between the parties.¹⁵ These private rights are not affected by the grant of the Application. The transfer of control of Stanacard from Michael Choupak to Anastasia Koroleva can cause no harm to Petitioners because, even if—*arguendo*—their claims of a 10% membership interest in Stanacard were adjudged to be valid in the Litigation, Mr. Choupak would still be the controlling member and could still transfer control of the Applicant. Hence, Petitioners would not suffer a direct injury as a result of granting the transfer of control Application.¹⁶ Thus, Petitioners have no standing,¹⁷ and the Commission must dismiss the Petition.¹⁸

Section 1.939(d) requires petitioners to enumerate specific allegations of fact¹⁹ and, “[s]uch allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof”.²⁰ While a

¹⁴ It is incumbent upon the petitioner to “specifically plead and establish standing in the Petition.” *In the Matter of Wireless Properties of Virginia, Inc. Assignor & Nextel Spectrum Acquisition Corp. Assignee*, 23 F.C.C.R. 7474, 7478 (2008).

¹⁵ *See supra* at 2-3.

¹⁶ Indeed, Petitioners do not even claim an injury that would result from a grant of Stanacard’s Application.

¹⁷ Worldcom, Inc. Application at 6240.

¹⁸ 47 C.F.R. § 1.939(g).

¹⁹ 47 C.F.R. § 1.939(d).

²⁰ 47 C.F.R. § 1.939(d).

federal agency may take official notice of “legislative facts,”²¹ “technical or scientific facts,”²² facts which are “obvious and notorious” within the agency’s field of expertise and “facts contained in reports and records in the agency’s files,”²³ official notice is not appropriate for matters subject to dispute.²⁴ Petitions to deny that are not accompanied by the required affidavit must be dismissed.²⁵

The Petition relies exclusively on disputed facts subject to ongoing litigation. Because the facts outlined in the Petition do not qualify for official notice, pursuant to Sections 1.939(d) and 309(d)(1), an affidavit must accompany the Petition.²⁶ Petitioners filed no supportive affidavit with their Petition as required by Section 1.939(d) and 309(d)(1), and thus, the Petition must be dismissed.

Petitioners apparently did not comply with the service requirements of Section 1.939(c), electing only to file their Petition with the Commission. Section 1.939(c) provides that “a petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47.”²⁷ The Petitioners have apparently failed to serve the Petition upon Stanacard, its counsel, Mr. Choupak or Ms. Koroleva.

²¹ *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 298 (2000).

²² *See also McLeod v. I.N.S.*, 802 F.2d 89, 96 (3d Cir. 1986).

²³ *Falasco v. Com., Pennsylvania Bd. of Prob. & Parole*, 521 A.2d 991, 995 (Pa. Commw. Ct. 1987).

²⁴ *See, e.g., Union Elec. Co. v. F.E.R.C.*, 890 F.2d 1193, 1202-03 (D.C Cir. 1989).

²⁵ *See, e.g., In the Matter of Application of Wireless US, LLC, Assignor, Nextel of California, Inc., Assignee, for Consent to Assignment of 851.1625 MHz from Station WNXG805*, 22 F.C.C.R. 8643, 8645-46 (2007) (dismissing petition to deny where the petition included “a number of allegations of fact for which official notice cannot be taken” that were not supported by an affidavit); *In the Matter of Application of Am. Tower Corp. for Tower Registration with Envtl. Assessment*, 21 F.C.C.R. 1680, 1683 (2006) (dismissing as “improperly filed” petitions to deny not supported by affidavits); *In the Matter of United States Cellular Corp. Constructed Tower Near Fries, Virginia*, 24 F.C.C.R. 8729, 8734 (2009) (dismissing pursuant to Section 1.939(g) a petition to deny lacking the requisite affidavit).

²⁶ 47 C.F.R. § 1.939(d); 47 U.S.C. § 309(d)(1).

²⁷ 47 C.F.R. § 1.939(c).

Finally, Section 1.47 further requires that “[p]roof of service, as provided in this section, shall be filed before action is taken.”²⁸ Such proof “shall show the time and manner of service, and may be by written acknowledgement of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission.”²⁹ No such proof of service is included with the Petitioners’ submission.

V. CONCLUSION

As demonstrated above, the Commission must dismiss the Petition without removing the Application from streamlined processing.

Respectfully submitted,

/s/ Thomas K. Crowe

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February 16, 2012

²⁸ 47 C.F.R. § 1.47(g).

²⁹ *Id.*

Declaration

I, Anastasia Koroleva, Managing Member, Stanacard, LLC, hereby state and affirm that I have read the accompanying "Opposition to Petition to Deny" Domestic Application for the Consent to Transfer of Control of 214 Authorized Carrier, and that the facts stated therein are true to the best of my knowledge, information and belief.

Dated 2/16/2012



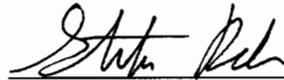
Anastasia Koroleva
Managing Member
Stanacard, LLC

CERTIFICATE OF SERVICE

I, Stefan Roha, a legal assistant at the Law Offices of Thomas K. Crowe, P.C., do hereby certify that on this 16th day of February, 2012, a copy of the foregoing "Opposition to Petition to Deny" of Stanacard, LLC was served, by the method described below, upon the following:

By first class U.S. Mail, postage prepaid:

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