



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU APPROVES SETTLEMENT AGREEMENT AND DIRECTS PARTIES TO DISMISS PLEADINGS WITHIN 30 DAYS

On February 4, 2004, Mobile Relay Associates and Mobile Relay Associates, Inc. (collectively MRA), James A. Kay, Jr. (Kay), and Laurence J. Feinberg (Feinberg) (collectively Parties) filed a Joint Motion seeking approval of a Settlement Agreement entered into by the Parties on January 19, 2004.¹ After reviewing the Parties' request, the Mobility Division and the Public Safety and Critical Infrastructure Division (PSCID) together² grant the Joint Motion and approve the Settlement Agreement to the extent indicated herein.

Background

Over the past few years, MRA and Kay have filed several pleadings against each other with respect to applications and licenses in the Las Vegas, Nevada area. On February 4, 2004, the Parties filed their Joint Motion and the associated Settlement Agreement expressing their intent to resolve these contested cases through the assignment of certain licenses, the cancellation of Feinberg's license for Station WPUR333, and the withdrawal of a number of pleadings.³ Feinberg has not filed any pleadings relevant to the contested issues, but cancellation of his license is required if the Parties are to have the relief requested by their Settlement Agreement, and he has agreed to submit his license for cancellation.

On February 25, 2004, pursuant to the terms of the Settlement Agreement, Kay and MRA filed two assignment applications. One application, File No. 0001621776, sought consent to assign sixteen (16) Private Industrial/Business Pool stations from MRA to Kay (MRA-Kay Application).⁴ The second

¹ Joint Motion For Approval of Settlement, Withdrawal or Amendment of Pleadings, Grant of Applications and Cancellation of License, filed by Mobile Relay Associates and Mobile Relay Associates, Inc., James A. Kay, Jr., and Laurence J. Feinberg (Feb. 4, 2004) (Joint Motion).

² This Public Notice is issued by both Divisions because the Settlement Agreement covers both Private Land Mobile Radio and Commercial Mobile Radio Service licenses, which are, respectively, the responsibility of PSCID and the Mobility Division.

³ Schedules 4.1 and 5.1 to the Settlement Agreement list a number of pleadings associated with 23 applications that the Parties intend to withdraw upon approval of the Agreement. The same lists are provided in Exhibits E and F to the Joint Motion.

⁴ FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, Assignment of Authorization, File No. 0001621776 (Feb. 25, 2004). Thirteen (13) of the stations are authorized for conventional operations (IG): KDY374, KNQ678, KS9400, KWP438, KYJ582, WIB617, WII345, WIL252, WIL294, WIL433, WIL618, WIL694, and WSD94. The remaining three (3) stations listed on the application are authorized for trunked operations (YG): WIG828, WPQC332, and WPTF351.

application, File No. 0001629299, seeks consent to assign seven (7) Private Industrial/Business Pool stations from Kay to MRA (Kay-MRA Application).⁵ Both assignment applications were placed on public notice, and PSCID consented to the MRA-Kay Application on March 5, 2004.⁶ The Kay-MRA Application remains pending because of an issue under consideration with regard to Kay's Station WIL653, one of the stations included in the assignment application. For the same reasons, a renewal application filed by Kay for Station WIL653 is currently pending before the Commission.⁷ As stated above, under the terms of the Settlement Agreement, to resolve the issue that involves Station WIL653, Feinberg has agreed to cancel his license for Station WPUR333 within five (5) business days of Commission approval of the Settlement Agreement.

Discussion

The Mobility Division and the Public Safety and Critical Infrastructure Division have reviewed the Joint Motion and find that it raises no substantial or material questions of fact under Section 309(d) of the Communications Act, as amended.⁸ Each Party filed individual certifications in support of the Joint Motion for Approval of Settlement, including the withdrawal of all pleadings pursuant to Section 1.935 of the Commission's rules.⁹ Pursuant to Sections 0.331 and 1.935 of the Commission's rules, and the statements contained in the Joint Motion for Settlement and in the related certifications, the Mobility Division and the Public Safety and Critical Infrastructure Division together are approving the Settlement Agreement entered into by the Parties on January 19, 2004.

Pursuant to the terms of that Agreement, Kay and MRA have agreed to file motions to dismiss or withdraw all pleadings associated with the twenty-three (23) applications referenced in the Joint Motion. Accordingly, the Parties are directed to file requests for dismissal, with prejudice, of all pleadings, as required by Sections 4 and 5 of the Settlement Agreement, no later than thirty (30) days following release of this Public Notice. The request(s) for dismissal must identify each pleading with specificity, including at a minimum, the name of the party who filed the pleading, the full caption of the pleading, the date stamped on the pleading, and, if known, any file number associated with the pleading. The following table lists seven "sets" of pleadings that Kay and MRA have agreed to withdraw based on the information provided in Exhibits E and F to the Joint Motion. The list is intended to help parse out which pleadings are relevant to the Settlement Agreement and is not intended to constitute a complete list. We note that both Kay and MRA have agreed under Sections 4 and 5 of the Settlement Agreement to withdraw all pleadings that one has filed against the other, including but not limited to the pleadings listed in the Joint Motion. Our grant of the Joint Motion is specifically conditioned on withdrawal of all such pleadings, whether or not listed herein or in the Joint Motion or Settlement Agreement.

The request(s) for dismissal of pleadings associated with File Numbers 0001420784 and 415714 must be filed with the Mobility Division. All other request(s) for dismissal must be filed with the Public Safety and Critical Infrastructure Division. In addition, once Feinberg has submitted the appropriate request and the license for Station WPUR333 is cancelled pursuant to that request, PSCID thereupon will process both Kay's renewal application for Station WIL653, and the assignment application, File No.

⁵ FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, Assignment of Authorization, File No. 0001629299 (Feb. 25, 2004). The stations listed on the application are authorized for conventional operations (IG): WIF759, WIJ867, WIK664, WIK951, WIL256, WIL625, and WIL653.

⁶ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 1770 (Mar. 10, 2004).

⁷ FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, Renewal Only, File No. 0001562810 (Dec. 31, 2003).

⁸ 47 U.S.C. § 309(d).

⁹ 47 C.F.R. § 1.935.

0001629299, associated with the Settlement Agreement seeking to assign Private Industrial/Business Pool stations from Kay to MRA.

LIST OF PLEADINGS

PLEADING	FILER	DATE	APPLICATION NUMBER(S)
First Set of Pleadings			
Petition for Enforcement Action against MRA; First Supplement; Second Supplement; Third Supplement	Kay	12/4/01 3/5/02 4/24/02 10/3/02	PSPWD Order, DA 03-2155, rel. 7-8-03, granted Petition to the extent MRA Stations WII622, WII664, and WIJ226 permanently discontinued operations and therefore automatically cancelled before the applications to assign the stations to MRA were filed; otherwise denied
Petition to Deny	Kay	10/11/02	0000526163, 0000530288, 0000628268; Applications dismissed, PSPWD Order, DA 03-2155, rel. 7-8-03
Opposition to Petition to Deny	MRA	10/30/02	0000526163, 0000530288, 0000628268
Petition for Reconsideration	Kay	10/11/02	0001018807, 0001028296, 0001028303, 0001027579, 0001027595; Petition denied, PSPWD Order, DA 03-2155, rel. 7-8-03
Opposition to Petition for Reconsideration	MRA	10/30/02	0001018807, 0001028296, 0001028303, 0001027579, 0001027595
Consolidated Reply to Oppositions	Kay	11/19/02	0000526163, 0000530288, 0000628268, 0001018807, 0001028296, 0001028303, 0001027579, 0001027595
Petition for Reconsideration	Kay	5/12/03	0001280607, 0001280608, 0001280611; Petition denied, PSPWD Order, DA 03-2155, rel. 7-8-03
Opposition to Petition for Reconsideration	MRA	5/27/03	0001280607, 0001280608, 0001280611
Petition for Reconsideration (pending)	MRA	8/7/03	0000526163, 0000530288, 0000628268, 0001018807, 0001028296, 0001028303, 0001027579, 0001027595, 0001280607, 0001280608, 0001280611; to be withdrawn only with respect to the request for reinstatement of MRA Stations WII622, WII664, and WIJ226
Opposition to Petition for Reconsideration (pending)	Kay ¹⁰	8/21/03	0000526163, 0000530288, 0000628268, 0001018807, 0001028296, 0001028303, 0001027579, 0001027595, 0001280607, 0001280608, 0001280611
Petition for Reconsideration (pending)	Kay	8/7/03	0000526163, 0000530288, 0000628268, 0001018807, 0001028296, 0001028303, 0001027579, 0001027595, 0001280607, 0001280608, 0001280611
Opposition to Petition for Reconsideration (pending)	MRA	8/20/03	0000526163, 0000530288, 0000628268, 0001018807, 0001028296, 0001028303, 0001027579, 0001027595, 0001280607, 0001280608, 0001280611
Second Set of Pleadings			
Supplement to Petition for Reconsideration	Kay	8/1/02	0000644810
Opposition to Petition for Reconsideration	MRA	3/20/02	0000644810

¹⁰ We note that on August 22, 2003, National Science and Technology Network, Inc. (NSTN) also filed an Opposition to MRA's Petition for Reconsideration, with respect to application file numbers 0000526163, 0000530288, 0000628268. Upon MRA's withdrawal of its Petition for Reconsideration, as specified herein, NSTN's Opposition will become moot and will be dismissed as such.

**LIST OF PLEADINGS
(Continued)**

PLEADING	FILER	DATE	APPLICATION NUMBER(S)
Third Set of Pleadings			
Motion to Strike Unauthorized Pleading	MRA	8/5/02	0000400166
Opposition to Motion to Strike	Kay	8/19/02	0000400166
Fourth Set of Pleadings			
Petition for Reconsideration, or Alternatively, Petition for Initiation of Revocation	MRA	4/1/03	415714; Feinberg License WPUR333
Fifth Set of Pleadings			
Petition for Reconsideration	Kay	4/28/03	GC Docket No. 02-37; PFR denied after Joint Motion was filed by Commission order released 3/23/04, FCC 04-65,
Opposition to Petition for Reconsideration	MRA	6/16/03	GC Docket No. 02-37
Sixth Set of Pleadings			
Protest and Objection to Application	Kay	5/29/03	0001238586, 0001293127, 0001308977, 0001278326, 00013167555, 0001316822
Objection to Protest and Objection to Application	MRA	6/11/03	0001238586, 0001293127, 0001308977, 0001278326, 00013167555, 0001316822
Seventh Set of Pleadings			
Petition to Dismiss or Deny	MRA	9/22/03	0001420784
Opposition to Petition to Dismiss or Deny	Kay	10/7/03	0001420784

All licenses transferred or otherwise conveyed hereby remain subject to the conditions, if any, thereon.

Action taken pursuant to Sections 0.331 and 1.935 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.935, by the Assistant Chief, Mobility Division, and Deputy Chief, Public Safety and Critical Infrastructure Division.

For further information, contact Cyndi Thomas, Assistant Chief, Mobility Division at (202) 418-2018 or Cyndi.Thomas@fcc.gov; or Michael Wilhelm, Deputy Chief, Public Safety and Critical Infrastructure Division at (202) 418-0680 or Michael.Wilhelm@fcc.gov.