



Federal Communications Commission
Washington, D.C. 20554

January 11, 2002

DA 02-62

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Re: Mobile Relay Associates

Dear Mr. Kaufman:

This letter responds to correspondence filed on behalf of Mobile Relay Associates, Inc. ("MRA"), requesting a grace period on the first installment payment for a 900 MHz Specialized Mobile Radio Service ("SMR") license.¹ MRA also requests reimbursement for the loss of use of funds paid to the Commission based upon its contention that the second down payment for this license was submitted earlier than required.² Finally, MRA requests that the Commission change the license grant date from February 14, 1997 to September 22, 1997 and recalculate the amount of its first installment payment accordingly.³ For the reasons set forth below, we dismiss the grace period request as moot and dismiss MRA's request for reimbursement and the request to change the license grant date and recalculate the installment payment as untimely.

I. Background

On April 15, 1996, the Commission announced that MRA was the high bidder for one SMR license in Auction No. 7.⁴ As a small business, MRA was eligible to participate in the Commission's installment payment plan⁵ and eligible for a reduced down payment.⁶ As required by the *April 1996 Public Notice*, MRA timely submitted its first five percent down payment and filed its long-form application ("application").⁷ On May 20,

¹ Letter from David J. Kaufman, Counsel for MRA, to Regina Dorsey, Chief, Billings and Collections Branch, Wireless Telecommunications Bureau, dated October 14, 1997 ("October 14, 1997 Letter"); Letter from David J. Kaufman, Counsel for MRA, to Regina Dorsey, Chief, Billings and Collections Branch and Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, dated July 29, 1999 ("July 29, 1999 Letter").

² October 14, 1997 Letter at 1; July 29, 1999 Letter at 3.

³ *Id.*

⁴ MRA was the high bidder on the Denver, Colorado (MTA022) P block license in the 900 MHz SMR auction with a net high bid in the amount of \$474,300. FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, *Public Notice*, 11 FCC Rcd 18599 (1996) ("*April 1996 Public Notice*").

⁵ 47 C.F.R. §§ 90.812 and 1.2110(e) (1996).

⁶ 47 C.F.R. § 90.811 (1996).

⁷ October 14, 1997 Letter at 1.

1996, the Wireless Telecommunications Bureau (“Bureau”) released a Public Notice stating that MRA’s application was accepted and any petitions to deny must be filed within 30 days.⁸ On June 19, 1996, in accordance with the deadline imposed in the *May 20, 1996 Public Notice*,⁹ PCS Development Corporation filed a petition to deny MRA’s application.¹⁰ On June 28, 1996, the Bureau issued a *Ready to Grant Public Notice* listing MRA as a winning bidder whose application the Bureau was prepared to grant.¹¹ The *Ready to Grant Public Notice* also triggered the five business day period within which the Commission’s rules required MRA to submit its second five percent down payment.¹² MRA timely submitted the second five percent down payment.¹³ On August 22, 1996, MRA and PCS Development Corporation filed a joint settlement agreement with the Commission.¹⁴

In a Public Notice, dated February 14, 1997, the Commercial Wireless Division accepted the settlement agreement and granted MRA’s license.¹⁵ In a letter dated September 22, 1997, the Commission provided MRA with the Installment Payment Note and Security Agreement (“loan documents”) and informed MRA that it was required to make its first installment payment in the amount of \$30,521.21 by November 30, 1997.¹⁶ MRA did not submit its first installment payment by the deadline nor did it execute and return the loan documents. However, in a letter dated October 14, 1997, MRA timely requested a grace period.¹⁷ To date, MRA has paid all of its subsequent quarterly installment payments within the period required under the Commission’s rules.¹⁸

⁸ 900 MHz Specialized Mobile Radio Service Information, *Public Notice*, 11 FCC Rcd 22447 (1996) (“*May 20, 1996 Public Notice*”).

⁹ *Id.*

¹⁰ October 14, 1997 Letter at 2.

¹¹ FCC Prepared to Award 900 MHz MTA Licenses, *Public Notice*, 11 FCC Rcd 7701 (1996) (“*Ready to Grant Public Notice*”).

¹² *Id.*; 47 C.F.R. §§ 1.2107, 1.2109, 90.811 (1996).

¹³ October 14, 1997 Letter at 1.

¹⁴ October 14, 1997 at 2. Section 90.162 of the Commission’s rules governs a request to withdraw or dismiss a petition to deny filed against a license application. 47 C.F.R. § 90.162.

¹⁵ Commercial Wireless Division Accepts Settlement Agreement Between Mobile Relay Associates, Inc. and PCS Development Corporation, and Grants Respective 900 MHz SMR Licenses, *Public Notice*, 12 FCC Rcd 2365 (1997) (“*Grant Public Notice*”).

¹⁶ Letter from Federal Communications Commission to Mobile Relay Associates, dated September 22, 1997 (“*September 22, 1997 Letter*”).

¹⁷ October 14, 1997 Letter. The July 29, 1999 Letter supplemented MRA’s October 14, 1997 Letter.

¹⁸ With the exception of the first payment, MRA asserts that it has continued to submit the quarterly installment payments. July 29, 1999 Letter at 1.

II. Discussion

A. MRA's Grace Period Request.

At the time the grace period request was filed, the Commission's installment payment rules provided that in the event a license holder is more than ninety days delinquent on any installment payment, its license would cancel automatically.¹⁹ If, during the first ninety days following any missed installment payment, a licensee required financial assistance, the rules allowed the licensee to request that the Commission grant a grace period of three to six months, during which no installment payments need be made.²⁰ Because the first installment payment was due on November 30, 1997, MRA had ninety days after that date, until March 2, 1998, to submit the first installment payment or file a grace period request. MRA timely filed the grace period request.²¹ However, because MRA has effectively received a grace period greater than six months, we will dismiss MRA's grace period request as moot. As detailed below, MRA is required to submit the first installment payment by May 31, 2002.

B. Reimbursement Request

MRA claims that it was premature to include it on the June 28, 1996 *Ready to Grant Public Notice* because a petition to deny was pending against its application.²² As previously noted, MRA was obliged under the Commission's rules to submit its second down payment within five business days after the release of the *Ready to Grant Public Notice*.²³ Based upon MRA's contention that it was erroneously required to pay the second down payment early, it requests an adjustment against its first installment payment to compensate it for the loss of use of funds caused by such early payment.²⁴ MRA's challenge to the second down payment deadline should have been filed within thirty days after the release of the *Ready to Grant Public Notice*.²⁵ Although MRA had knowledge of the petition to deny, it did not dispute the second down payment deadline until October 14, 1997, more than one year after the release of the *Ready to Grant Public Notice*.²⁶ Accordingly, we dismiss MRA's request as untimely. Even assuming it was properly filed, MRA's request would be denied. As a preliminary matter, the Commission lacks the authority to reimburse entities for interest

¹⁹ 47 C.F.R. § 1.2110(e)(4) (1996); *see* 47 C.F.R. § 90.812 (1996).

²⁰ 47 C.F.R. § 1.2110(e)(4)(ii) (1996). Licensees with properly filed grace period requests would not be held in default during the pendency of their requests. *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 442, ¶ 113 (1997).

²¹ October 14, 1997 Letter.

²² October 14, 1997 Letter at 2 and 4; July 29, 1999 Letter at 2.

²³ *Ready to Grant Public Notice*, 11 FCC Rcd 7701; 47 C.F.R. §§ 1.2107, 1.2109, 90.811 (1996).

²⁴ October 14, 1997 Letter at 4. MRA requests an amount equal to the interest it would have earned on its second down payment between July 8, 1996 (when the payment was made) and September 22, 1997. Using a 9% interest rate, MRA contends that it is entitled to an offset in the amount of \$2,573.07.

²⁵ 47 U.S.C. § 405; *see* 47 C.F.R. § 1.106(f) (1996).

²⁶ October 14, 1997 Letter at 2.

on payments made to the Commission.²⁷ Further, although the Commission generally does not grant a license without also disposing of a petition to deny,²⁸ in this instance, only the *Ready to Grant Public Notice* was issued prior to the resolution of the petition to deny. In fact, the parties filed a settlement agreement for the purpose of resolving the petition to deny with the Commission less than two months after the second down payment deadline and prior to grant of the license.²⁹ Thus, any harm relating to the timing of the release of the *Ready to Grant Public Notice* was inconsequential and did not relieve MRA from submitting its second down payment in accordance with Sections 1.2107, 1.2109 and 90.811 of the Commission's rules.³⁰ Therefore, MRA's untimely request is dismissed.

C. Request to Change the Grant Date.

Finally, MRA requests that the Commission change the grant date on the license and accordingly, recalculate the amount of the first installment payment.³¹ MRA bases its request upon its contention that it first received notice of the grant in the *September 22, 1997 Letter*.³² Although MRA acknowledges that it read the *Grant Public Notice*, it argues that the June 28, 1996 *Ready to Grant Public Notice* and the February 14, 1997 *Grant Public Notice* were identically worded and it therefore could not rely on either notice to begin construction.³³ As with the reimbursement request, this request is also untimely. MRA failed to file its request

²⁷ 47 U.S.C. § 309(J)(8)(B)-(C); *see Library of Congress v. Shaw*, 478 U.S. 310, 311 (1986) (In the absence of an express waiver of sovereign immunity a claim for interest will not lie against the United States).

²⁸ *See generally*, 47 C.F.R. §§ 90.163-90.166 (1996). Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2685, ¶ 6 (1995).

²⁹ MRA submitted the second down payment on July 8, 1996 and less than two months later, on August 22, 1996, filed the settlement agreement with PCS Development Corporation. October 14, 1997 Letter at 2. The Commission accepted the settlement agreement and granted the license. *Grant Public Notice*, 12 FCC Rcd 2365. Thus, the petition to deny was not pending at the time of grant and, therefore, the grant was in accordance with the Commission's rules. 47 C.F.R. § 90.166 (1996).

³⁰ 47 C.F.R. §§ 1.2107, 1.2109, 90.811 (1996). The obligation to pay the winning bid is imposed at the close of the auction and neither the pendency of the license application nor the filing of any petition to deny relieves the winning bidder of that obligation. *See In re Nextwave Personal Communication, Inc.*, 200 F.3d 43, 52 (2nd Cir. 1999), *cert. denied*, 2000 WL 795201 (a high bidder becomes "obligated to the FCC for the full amount of winning bid at the close of the ... auction"); Application for Assignment of Broadband PCS Licenses, *Order*, 14 FCC Rcd. 1126, ¶ 1 (1998) (affirming the Wireless Telecommunications Bureau's requirement that assignees execute certain documents, including assignment and assumption agreements, and noting that the licensee's binding obligations to repay the original bid price for the licenses was incurred upon acceptance of the high bid); *see also April 1996 Public Notice, supra*, note 2.

³¹ October 14, 1997 Letter at 1-4; July 29, 1999 Letter at 1-4. Changing the grant date to September 22, 1997 would change the amount of MRA's first installment payment because interest would begin to accrue as of September 22, 1997 and not February 14, 1997. Along with the change to the grant date, MRA also requests that the Commission change the construction deadlines as well as license expiration and renewal deadlines. July 29, 1999 Letter at 3.

³² October 14, 1997 Letter at 1-4 and July 29, 1999 Letter at 4.

³³ October 14, 1997 Letter at 2 and July 29, 1999 Letter at 2. MRA further argues that it believed the *Grant Public Notice* merely resolved all pending issues regarding MRA. July 29, 1999 Letter at 2.

to change the grant date within 30 days of the February 14, 1997 *Grant Public Notice*.³⁴ As we explain below, MRA's argument concerning notice of the grant date is unpersuasive and fails to cure the untimely nature of its request.

MRA's notice argument ignores the plain language of the *Grant Public Notice*,³⁵ which clearly states that the Commercial Wireless Division granted the application effective February 14, 1997.³⁶ Further, a comparison of the two public notices also reveals the fallacy in MRA's contention that they were identically worded.³⁷ Thus, we conclude that the *Grant Public Notice* provided notice to MRA that its grant date was February 14, 1997. Accordingly, we dismiss as untimely MRA's request to change the grant date. We also note that all regulatory obligations that flow from the grant date of February 14, 1997 therefore remain in full force and effect.³⁸

D. MRA Payment Obligations.

MRA is required to submit the first installment payment ("First Payment") in the amount of \$30,521.21 by May 31, 2002. The First Payment amount is subject to the same late fee and default provisions as any other installment payment as provided in Section 1.2110(g)(4)(i)-(iv) of the Commission Rules, which allow payment up to two quarters after the due date, subject to payment of applicable late fees.³⁹ Pursuant to the Commission's rules, should MRA fail to pay any past due installment payment amount or the First Payment amount within two quarters of the payment's due date, it shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures.⁴⁰

³⁴ 47 U.S.C. § 405; *see* 47 C.F.R. § 1.106(f) (1996).

³⁵ The *Grant Public Notice* is entitled "Commercial Wireless Division Accepts Settlement Agreement Between Mobile Relay Associated, Inc. and PCS Development Corporation, and Grants Respective 900 MHz SMR Licenses." *Grant Public Notice*, 12 FCC Rcd 2365.

³⁶ 47 C.F.R. § 1.933(a) (1996) (the Commission will describe in a Public Notice any action it has taken concerning applications that were previously listed as accepted for filing). The effective date of any Commission action is the date of public notice of such action. 47 C.F.R. § 1.103 (1996).

³⁷ The titles of the public notice themselves amply demonstrate that they are two different notices. The title in the *Ready to Grant Public Notice* states, "FCC Prepared to Award 900 MHz MTA Licenses" while the title in the *Grant Public Notice* states that the Commercial Wireless Division, "Grants Respective 900 MHz SMR licenses." *See* note 9, 12, and 34, *supra*. Further, a review of the Commission's rules would notify any applicant that it need not wait for a *Grant Public Notice* to begin construction because the rules allow applicants, at their own risk, to begin construction prior to grant provided that certain exemptions do not apply. 47 C.F.R. § 90.169; Implementation of Sections 3(n) and 332 of the Communications Act Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, *Third Report and Order*, 9 FCC Rcd 7988, 8153, ¶ 377 (1994).

³⁸ Thus, the February 14, 1997 date continues to be the grant date for purposes of determining MRA's construction deadlines, license expiration and renewal deadlines, and any other obligation related to the grant date.

³⁹ 47 C.F.R. § 1.2110(g)(4) (2001).

⁴⁰ 47 C.F.R. § 1.2110(g)(4)(iv) (2001).

MRA must sign and return the loan documents within **30 days** of the date of this letter. In addition, MRA is responsible for the payment of all costs associated with the preparation and recordation of the financing statement (“UCC-1”). An invoice of these costs is attached to this letter. Finally, to properly file the UCC-1, the MRA must also provide the Commission with its most current filed charter documents and applicable organization identification number.

Failure to comply with Section 1.2110(g) of the Commission’s rules will result in automatic cancellation of the Commission’s grant of the license.⁴¹

III. Conclusion

For the reasons detailed above, we dismiss the grace period as moot. We also dismiss MRA’s request for reimbursement and the request to change the grant date and recalculate the first installment payment as untimely.

This action is taken pursuant to sections 1, 4(i), 4(j), 303(r), 309(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309(j), and 405 and the authority delegated pursuant to section 0.331 of the Commission’s Rules, 47 C.F.R. § 0.331.

Sincerely,

Margaret W. Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁴¹ 47 C.F.R. § 1.2110(g)(3) (2001); *see* Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497, 1524, ¶ 44 (1999).