

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

In the Matter of Application of)
)
BANK OF AMERICA NT & SA, Assignor)
and CUSTOMTRONICS, Assignee) FCC File No. 0000321514
)
For Assignment of Call Signs WNKZ783,)
WNWQ647 and WPLU823, Los Angeles and)
Orange Counties, California)

MEMORANDUM OPINION AND ORDER

Adopted: August 22, 2001

Released: August 24, 2001

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

1. Introduction. On April 6, 2001, Mobil Relay Associates, Inc. ("MRA") filed a Petition for Partial Reconsideration of the grant of the above-captioned application to assign the authorizations for Stations WNKZ783, WNWQ647 and WPLU823, Los Angeles and Orange Counties, California, from Bank of America NT & SA ("BOA") to CUSTOMtronics. Specifically, MRA seeks temporary return of the application to assign Call Sign WNWQ647 to pending status. CUSTOMtronics filed a timely Opposition to the Petition for Partial Reconsideration on April 19, 2001. MRA submitted a Reply to CUSTOMtronics's Opposition on April 24, 2001. For the reasons discussed below, we dismiss MRA's Petition.

2. Background. According to MRA, in April of 1990, MRA entered into an agreement with BOA involving the 900 MHz conventional Business Radio Service station now licensed under Call Sign WNWQ647. On November 30, 2000, BOA filed an application to assign authorization of Call Signs WNKZ783, WNWQ647 and WPLU823 to CUSTOMtronics. The BOA application was placed on public notice on January 17, 2001. MRA did not oppose the application. The assignment was consented to on February 26, 2001.

3. On April 6, 2001, MRA filed a Petition for Partial Reconsideration of the grant, seeking the temporary return of the application to pending status insofar as it relates to Call Sign WNWQ647. MRA asserts that consummation of the assignment of the license from BOA to CUSTOMtronics will put BOA in breach of its agreement with MRA, and will further result in the tortious interference by CUSTOMtronics with the agreement between BOA and MRA. Although MRA acknowledges that the Commission lacks jurisdiction to determine contract issues, it nevertheless asserts that temporarily

1 See Mobile Relay Associates, Inc., Petition for Partial Reconsideration (filed Apr. 6, 2001) ("MRA Petition").

2 Id. at 1.

3 Pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309(b), no license application shall be granted earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application.

4 Public notice of the grant was given on March 7, 2001. See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, Public Notice, Report No. 799 (rel. Mar. 7, 2001).

5 MRA Petition at 1.

6 Id.

returning the application to pending status will afford it sufficient time to institute a breach of contract action in California state court, thus providing the court with an opportunity to exert its jurisdiction and rule appropriately.⁷

4. *Discussion.* Section 1.106(b)(1) of the Commission's Rules, requires that a petition filed by a person who is not a party to the proceeding show good reason why it was not possible for him to participate in the earlier stages of the proceedings.⁸ We agree with CUSTOMtronics that MRA's Petition should be dismissed because MRA failed to participate in the earlier stages of the proceeding, for example, by filing a petition to deny the license assignment.⁹ MRA has failed, in its Petition, to address its lack of participation in the earlier stages of this proceeding. As MRA's petition fails to show good reason for its lack of participation, we find that its reconsideration petition is not in compliance with Section 1.106(b)(1) of our Rules and must be dismissed.¹⁰

5. Moreover, even if MRA had made a sufficient showing regarding its lack of prior participation in this proceeding, we nonetheless would decline to address the merits of the Petition in any event, in light of the Commission's long-standing policy of repudiating involvement in contractual disputes.¹¹ Although MRA asserts that it is not seeking resolution of the contract issue in dispute, and is merely seeking the temporary return of the referenced application to pending status to afford the California courts the opportunity to exert their jurisdiction and resolve the issue, under the circumstances we do not believe that we could effectively honor MRA's request without inserting the Commission into the contract dispute.¹²

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration filed by Mobile Relay Associates, Inc., on April 6, 2001 IS DISMISSED.

7. This action is 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

⁷ *Id.*

⁸ 47 C.F.R. § 1.106(b)(1).

⁹ See CUSTOMtronics, Opposition to Petition For Partial Reconsideration at 1-2 (filed Apr. 19, 2001).

¹⁰ See Ogden Television, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 3116, 3117 ¶ 5 (MMB VSD 1992).

¹¹ See, e.g., O.D.T. International, *Memorandum Opinion and Order*, 9 FCC Rcd 2575, 2576 ¶ 9 (1994) ("the Commission is not the proper forum for resolving contractual disputes ... and we have consistently indicated that controversies which do not reflect upon the qualifications of a Commission licensee are best left to the local courts for resolution").

¹² However, we note that our decision here does not preclude us from taking action in the future should the outcome of any ensuing state court litigation on this matter warrant us doing so.