



Federal Communications Commission
Washington, D.C. 20554

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DA 04-46

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Re: Applications to Assign Licenses from U.S. Telemetry Corporation Affiliates to IGGW Interactive, Inc. – FCC File Nos. 0001536370, 0001536439, and 0001536453

Dear Mr. Gavin, Ms. Moran, and Mr. Kaffee:

We have reviewed the referenced applications, filed December 5, 2003, seeking Commission consent to assign the licenses for 218-219 MHz Service Stations KIVD0040, KIVD0194, and KIVD0327 from U.S. Telemetry-Portland, Inc., U.S. Telemetry-Omaha, Inc., and U.S. Telemetry-Lincoln, Inc., respectively, (collectively, the “U.S. Telemetry Affiliates”) to IGGW Interactive, Inc. (“IGGW”) *nunc pro tunc*. As discussed in further detail below, we hereby consent to the referenced applications. In addition, we hereby give effect *nunc pro tunc* to the timely election submitted by IGGW for these licenses pursuant to the Commission’s restructuring plan for the 218-219 MHz Service.

The subject applications were filed pursuant to and in furtherance of a bankruptcy court-approved settlement agreement entered into on December 4, 2003 by U.S. Telemetry Corporation (“U.S. Telemetry”) and the U.S. Telemetry Affiliates, IGGW, Patrick J. Malloy, III, as Trustee for the Chapter 7 bankruptcy estate of Wincom Corporation (“Wincom”), and the United States. The Settlement Agreement, which is attached as an exhibit to each of the referenced applications, was entered into to end ongoing litigation between U.S. Telemetry and IGGW regarding the status of the subject licenses, including pending litigation before the Commission. Specifically, the Commission has before it a Petition for Reconsideration (“Petition”) filed by IGGW on April 4, 2001, requesting reconsideration of the decision of the Chief, Wireless Telecommunications Bureau, rejecting the election submitted by IGGW pursuant to the Commission’s restructuring plan for the 218-219 MHz Service; an Opposition to the Petition filed by U.S. Telemetry on April 24, 2001; and a Reply to the Opposition filed by IGGW on May 4, 2001. The action taken herein renders the Petition and responsive pleadings moot.

The salient provisions of the Settlement Agreement provide that (a) the U.S. Telemetry Affiliates and IGGW will file the referenced applications for the three-step assignment of the subject licenses *nunc pro tunc* to IGGW, unwinding in reverse order the three-step assignments to the U.S. Telemetry Affiliates

previously approved by the Commission; (b) the U.S. Telemetry Affiliates will seek dismissal with prejudice of their bankruptcy cases; (c) U.S. Telemetry, the U.S. Telemetry Affiliates, the Wincom bankruptcy Trustee, Patrick J. Malloy, III, and IGGW will file a joint motion to dismiss IGGW's pending appeal in the U.S. District Court for the Northern District of Oklahoma of certain decisions made by the bankruptcy court; (d) within forty-five days of the filing of the contemplated assignment applications, the Commission will review the applications, and approve the applications *nunc pro tunc* if doing so is consistent with the Commission's rules and regulations and the Communications Act of 1934, as amended, and is otherwise in the public interest; and (e) the Commission will also give effect *nunc pro tunc* to IGGW's restructuring election, by which IGGW proposes to return the Portland, Oregon license to the Commission and to use its accumulated payments to pay off the remaining balance on the Omaha and Lincoln, Nebraska licenses.

We conclude that approval of the referenced applications will serve the public interest, convenience, and necessity, as required under Section 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(a). As recounted in the Public Interest Statement accompanying each of the referenced applications, as well as the Joint Request for Approval of Settlement Agreement submitted by the applicants on March 5, 2003, there has been a dispute between the U.S. Telemetry Affiliates and IGGW for several years as to whether the Wincom bankruptcy estate had an interest in the subject 218-219 MHz licenses; whether the Commission should have consented to the applications seeking approval for the three-step assignment of the licenses from IGGW to the Wincom bankruptcy estate, from the bankruptcy estate to the Trustee, Patrick J. Malloy, III, and from the Trustee to the U.S. Telemetry Affiliates; and whether it was appropriate to reject IGGW's restructuring election for the licenses. As a consequence, no service has been provided under these licenses, and the prospect of continuing litigation would mean that no service would be provided under these licenses for a protracted additional period, absent implementation of the court-approved Settlement Agreement. We agree with the applicants that approving the referenced applications would serve the public interest by resolving protracted litigation regarding these licenses, thus, and clearing the way for the expeditious provision of 218-219 MHz Service by IGGW in the Omaha and Lincoln, Nebraska markets. We also find that IGGW is legally and otherwise qualified to hold the licenses in question.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), that the applications filed December 5, 2003, to assign the license for Station KIVD0040 from U.S. Telemetry-Portland, Inc. to IGGW Interactive, Inc. (FCC File No. 0001536370), to assign the license for Station KIVD0194 from U.S. Telemetry-Omaha, Inc. to IGGW Interactive, Inc. (FCC File No. 0001536439); and to assign the license for Station KIVD0327 from U.S. Telemetry-Lincoln, Inc. to IGGW Interactive, Inc. (FCC File No. 0001536453) ARE APPROVED *nunc pro tunc*, effective January 30, 2001.

IT IS FURTHER ORDERED, pursuant to Sections 4(i), 309(a), and 309(j) of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i), 309(a), 309(j), that the election submitted by IGGW Interactive, Inc. pursuant to the 218-219 MHz Service Restructuring Plan, IS ACCEPTED *nunc pro tunc*.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by IGGW Interactive, Inc. on April 4, 2001, the Opposition to the Petition filed by U.S. Telemetry on April 24, 2001, and the Reply to the Opposition filed by IGGW on May 4, 2001 ARE DISMISSED AS MOOT.

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

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