

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12th Street, SW**  
**Washington, DC 20554**

DA No. 06-2115

October 26, 2006

Mr. Scott McIntyre  
Angel Communications, LLC  
30 D. W. Hwy # 9  
Merrimack, NH 03054

Harold Mordkofsky, Esq.  
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW  
Washington, DC 20037

RE: KNLW614 and KNLW615

Dear Mr. McIntyre and Mr. Mordkofsky:

For the reasons stated below, we hereby deny the “Informal Request for License Revocation,” filed by William Wayne d/b/a Mr. Radio (Wayne) on September 10, 2003 (Informal Request).

**Background.** At the time Wayne filed the Informal Request, he held Part 22 Paging and Radiotelephone Service geographic authorizations WPVP976, WPVP977, WPVP978, WPVP979, WPVP980, and WPVP981 in the Las Vegas, Nevada area (the “WPVP Authorizations”). Wayne assigned the authorizations to Angel Communications, LLC (Angel) on January 30, 2006.<sup>1</sup> Contact Communications, Inc. (Contact) is the licensee of Part 22 Paging and Radiotelephone Service site-based authorizations KNLW614 and KNLW615. Four of Contact’s licensed frequencies are co-channel with, and geographically encompassed by, the WPVP Authorizations.

In the Informal Request, Wayne alleges that Contact failed to construct KNLW614 and KNLW615 and that, even if it did, Contact did not provide service for 90 continuous days and thereby permanently discontinued operations under Section 22.317 of the Commission’s rules.<sup>2</sup> Based on these allegations, Wayne claims that the co-channel spectrum licensed under KNLW614 and KNLW615 reverted to Wayne as the geographic licensee.<sup>3</sup>

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<sup>1</sup> See ULS Files Nos. 0002320219 (assignment application), 0002478829 (consummation notification).

<sup>2</sup> See Informal Request at 2, citing 47 C.F.R. § 22.317 (“any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued”). See also 47 C.F.R. § 22.511 (“construction period for stations in the Paging and Radiotelephone Service is one year”).

<sup>3</sup> Informal Request at 3. Wayne filed a supplement on April 30, 2004 (Informal Request Supplement). Contact submitted information on September 1, 2004 (Contact Response). Wayne replied on September 14, 2004 (Wayne Reply). Contact responded on October 4, 2002 (Contact Second Response). Wayne replied on October 18, 2004 (Wayne Second Reply).

**Discussion.** We have reviewed the record in this matter—including the Informal Request, Informal Request Supplement, Contact Response, Wayne Reply, Contact Second Response, and Wayne Second Reply—and conclude that the weight of the evidence is insufficient to conclude that Contact failed to timely construct KNLW614 and KNLW615 or that it did not provide service for 90 continuous days.

*Station Location.* Contact does not dispute Wayne’s claim that it never constructed KNLW614 and KNLW615 at their originally licensed locations.<sup>4</sup> Rather, Contact states that after acquiring the licenses, “the assignor would not allow us to utilize the licensed locations,” and it therefore constructed the stations at 3125 Highland Drive, Las Vegas, in August 1998, and moved them to 1 Main Street, Las Vegas, in the summer of 2003.<sup>5</sup> Wayne, citing Section 22.352(e)(6) of the Commission’s rules, argues that because Contact belatedly notified the Commission of its relocation of KNLW614 and KNLW615, Contact’s co-channel spectrum reverted to Wayne.<sup>6</sup> Wayne misinterprets Section 22.352(e)(6), however, which provides that “[n]o protection is provided against interference to the service of any additional or modified transmitter operating pursuant to §§ 1.929 or 22.165, unless and until the licensee modifies its authorization using FCC Form 601.”<sup>7</sup> While under Section 22.352(e)(6) Contact may not have been entitled to interference protection from Wayne until its modification application was approved on March 15, 2004,<sup>8</sup> its spectrum did not revert to Wayne.

*Monitoring Evidence.* Wayne retained ESP Wireless Technologies (ESP) to monitor KNLW614 and KNLW615. Robert Barcal (Barcal), President of ESP states, in an unsworn letter, that an ESP “technician, Roland Kelts, has indicated that he had heard no traffic” on the frequencies assigned to KNLW614 and KNLW615.<sup>9</sup> Barcal, in a subsequent sworn letter, states that ESP monitored the stations from May 5, 2003 until July 18, 2003, and that its equipment detected no transmissions.<sup>10</sup> Barcal further claims that the “equipment was operational in the work area of our technical staff who” did not hear any traffic.<sup>11</sup> We find that the monitoring evidence is inconclusive. Barcal did not specify during what hours or even days of the monitoring period such technical staff may have been in the proximity of the equipment, nor does he provide a sworn statement of any of the technical staff with firsthand knowledge that would lend support to the claim. Even if we assume that the monitoring was performed properly, ESP only monitored for 74 days of the 90-day period that would constitute permanent discontinuance of operations under Section 22.317 of the Commission’s rules.<sup>12</sup>

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<sup>4</sup> Informal Request at 2.

<sup>5</sup> Contact Second Response 1.

<sup>6</sup> See Wayne Reply at 2.

<sup>7</sup> 47 C.F.R. § 22.352(c)(6).

<sup>8</sup> ULS File No. 0001653097 (application granted March 15, 2004).

<sup>9</sup> See Letter dated July 20, 2003, attached to Informal Request.

<sup>10</sup> See Letter dated April 5, 2004, attached to Informal Request Supplement. Wayne also states that Barcal detected no transmission of Contact’s stations’ identification. See Wayne Second Reply at 5.

<sup>11</sup> See ESP Letter dated April 5, 2004, attached to Wayne Supplement.

<sup>12</sup> See, e.g., Quatron Communications, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 4749, 4753-54 ¶¶ 12-13 (1999) (alleged monitoring insufficient to demonstrate discontinuance of operations); Cellular Design Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 13059, 13064 ¶ 12 (1999) (same); Thomas A. Baker, *Memorandum Opinion and Order*, 14 FCC Rcd 19556, 19558 ¶ 5 (WTB 1999) (monitoring from December 30, 1992 to December 9, 1993, insufficient to demonstrate discontinuance of operation for one year), *recon. denied*, 16 FCC Rcd 8448 (2001).

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*Fuson Declaration.* Wayne claims that the declaration of Francis G. Fuson (Fuson) supports his allegation that in 2000, Robert Bliss (Bliss), the principal of Contact, advised Fuson and him that Contact did not construct or operate the stations.<sup>13</sup> Bliss, in a sworn declaration, denies making any such statement.<sup>14</sup> Fuson states that he participated in discussions with Wayne and Bliss, during which “Bliss stated that the Contact Communications authorizations under discussion were not constructed or operational.”<sup>15</sup> Fuson, however, does not identify either KNLW614 or KNLW615 as “under discussion” or the date of such discussions other than “2000.” We find that the Fuson Declaration does not demonstrate that Contact either failed to timely construct or permanently discontinued operations.

Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41, 22.317, and 22.511 of the Commission’s rules, 47 C.F.R. §§ 1.41, 22.317, 22.511, the Informal Request for License Revocation, filed on September 10, 2003, by William Wayne, IS DENIED.

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.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>13</sup> See Declaration of Francis G. Fuson (dated Oct. 15, 2004), attached to Wayne Second Reply (Fuson Declaration). See also Wayne Reply at 3.

<sup>14</sup> Contact Second Response at 4.

<sup>15</sup> Fuson Declaration.