



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU MOBILITY DIVISION APPROVES REQUESTS FOR WITHDRAWAL OF PLEADINGS

Pursuant to Sections 0.331 and 1.935 of the Commission's Rules,¹ the Mobility Division (Division) approves (1) a request filed by James A. Kay, Jr. (Kay) on April 23, 2004, to dismiss with prejudice² his Protest and Objection to Application filed on May 29, 2003;³ (2) a request filed by Kay to dismiss with prejudice⁴ his Reply to Opposition filed on June 30, 2003;⁵ (3) a request by Kay to dismiss with prejudice⁶ his Opposition to Motion to Strike filed on August 19, 2002⁷; (4) a request by Kay to dismiss with prejudice⁸ his Supplement to Petition for Reconsideration filed on August 1, 2002;⁹ (5) a request by Kay to dismiss with prejudice¹⁰ his Petition for Enforcement Action against Mobile Relay

¹ 47 C.F.R. §§ 0.331, 1.935.

² Request for Dismissal of Pleadings filed by James A. Kay, Jr. (April 23, 2004).

³ Protest and Objection to Application filed by James A. Kay, Jr. (May 29, 2003).

⁴ Request for Dismissal of Pleadings filed by James A. Kay, Jr. (April 23, 2004).

⁵ Reply to Opposition filed by James A. Kay, Jr. (June 30, 2003).

⁶ Request for Dismissal of Pleadings filed by James A. Kay, Jr. (April 23, 2004).

⁷ Opposition to Motion to Strike filed by James A. Kay, Jr. (August 19, 2002). The Motion to Strike Unauthorized Pleading (Motion) sought to strike Kay's Further Petition for Limited Reconsideration (Further Petition) of the Public Safety and Private Wireless Division's decision in Mobile Relay Associates, *Order on Reconsideration*, 17 FCC Rcd 11277 (WTB PSPWD 2002). See Motion to Strike Unauthorized Pleading filed by Mobile Relay Associates (Aug. 5, 2002); Further Petition for Limited Reconsideration, filed by James A. Kay, Jr. (July 22, 2002). The *Order on Reconsideration* set aside grant of MRA's application FCC File No. 0000400166 pending action on Kay's application FCC File No. 415060. Kay sought reconsideration to correct the Universal Licensing System database to reflect the actions set forth in the *Order on Reconsideration*. Kay's application was granted on February 13, 2004 under Call Sign WPZP638. MRA withdrew its application on August 4, 2005. Given that Kay has received the relief requested in the Further Petition, we dismiss as moot both the Further Petition and MRA's Motion.

⁸ Request for Dismissal of Pleadings filed by James A. Kay, Jr. (April 23, 2004).

⁹ Supplement to Petition for Reconsideration filed by James A. Kay, Jr. (August 1, 2002).

¹⁰ Request for Dismissal of Pleadings filed James A. Kay, Jr. (April 23, 2004).

Associates (MRA) filed December 4, 2001;¹¹ (6) a request by Kay to dismiss with prejudice¹² his Supplement to Petition for Enforcement Action filed on March 5, 2002;¹³ (7) a request by Kay to dismiss with prejudice¹⁴ his Second Supplement to Petition for Enforcement Action Against MRA filed on April 24, 2002;¹⁵ and (8) a request by Kay to dismiss with prejudice¹⁶ his Third Supplement to Petition for Enforcement Action Against MRA filed on October 3, 2002.¹⁷

Kay filed his requests pursuant to a Settlement Agreement¹⁸ that was approved on April 15, 2004.¹⁹ The Division has reviewed the requests for dismissal, and finds that these requests raise no substantial or material question of fact under Section 309(d) of the Communications Act of 1934, as amended.²⁰ The Division also finds that Kay's requests comply with Section 1.935 of the Commission's Rules.²¹ Accordingly, we grant the subject requests for dismissal of various pleadings and hereby dismiss, with prejudice, all pleadings that Kay has requested be dismissed.

Action taken by Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

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¹¹ Petition for Enforcement Action against Mobile Relay Associates filed by James A. Kay, Jr. (December 4, 2001).

¹² Request for Dismissal of Pleadings filed James A. Kay, Jr. (April 23, 2004).

¹³ Supplement to Petition for Enforcement Action against Mobile Relay Associates filed by James A. Kay, Jr. (March 5, 2002).

¹⁴ Request for Dismissal of Pleadings filed James A. Kay, Jr. (April 23, 2004).

¹⁵ Second Supplement to Petition for Enforcement Action against Mobile Relay Associates filed by James A. Kay, Jr. (April 24, 2002).

¹⁶ Request for Dismissal of Pleadings filed James A. Kay, Jr. (April 23, 2004).

¹⁷ Third Supplement to Petition for Enforcement Action against Mobile Relay Associates filed by James A. Kay, Jr. (October 3, 2002).

¹⁸ See 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) (Settlement Agreement).

¹⁹ See Wireless Telecommunications Bureau Approves Settlement Agreement and Directs Parties to Dismiss Pleadings Within 30 Days, *Public Notice*, 19 FCC Rcd 6973 (WTB MD/PSCID 2004) (approving Settlement Agreement). In subsequent *Public Notices*, the Mobility Division and the former Public Safety and Critical Infrastructure of the Wireless Telecommunications Bureau approved MRA's and Kay's requests for withdrawal of various pleadings pursuant to the Settlement Agreement. See Wireless Telecommunications Bureau Mobility Division Approves Requests for Withdrawal of Pleadings, *Public Notice*, 19 FCC Rcd 8147 (WTB MD 2004); Wireless Telecommunications Bureau Public Safety and Critical Infrastructure Division Approves Requests for Withdrawal of Pleadings, *Public Notice*, 19 FCC Rcd 13301 (WTB PSCID 2004).

²⁰ 47 U.S.C. § 309(d).

²¹ 47 C.F.R. § 1.935.