

Original

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JUL 21 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
ROSAMOND RADIO, INC.)
)
JAMIE LEE COBERLY)
)
DIANE K. HITT)
)
For construction permit for a)
New FM Station on Channel 228A)
in Rosamond, California)

MM Docket No. 92-121
File No. BPH-910225MG
File No. BPH-910225MH
File No. BPH-910225MI

ORIGINAL
FILE

To: Joseph P. Gonzalez
Administrative Law Judge

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

1. Rosamond Radio, Inc. ("Rosamond") and Diane K. Hitt ("Hitt"), applicants for a new FM station to operate on Channel 228A in Rosamond, California (File Nos. BPH-910225MG and BPH-910225MI, respectively), respectfully request, pursuant to Section 73.3525 of the Commission's Rules, that the Settlement Agreement ("Agreement") attached hereto as Exhibit 1 be approved and that, upon approval, Hitt's application be dismissed with prejudice.

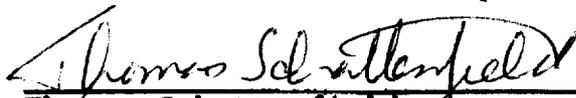
2. The Agreement provides for Rosamond to make a cash payment ("Settlement Payment") to Hitt in consideration for the dismissal of her application. The amount of the Settlement Payment to be made to Hitt is predicated upon (1) the Commission's determination that the claimed legitimate and prudent expenses incurred in the filing and prosecution of her application for the Rosamond facility are valid as claimed, or (2) if the Commission determines that some of the claimed expenses are not reimbursable, in such lesser amount as the Commission determines is valid. The undertakings of Hitt to dismiss her application and the undertakings of Rosamond to make the Settlement Payment are conditioned upon the Commission's action (1) approving the Agreement and (2) dismissing Hitt's application with prejudice becoming a "Final Action" as that term is defined in Paragraph 4 of the Settlement Agreement (Exhibit 1, hereto).

3. Attached as Exhibits 2 and 3 hereto are the Declarations of each of the applicants, Rosamond and Hitt, respectively, to the effect that they did not file their applications for the purpose of reaching or entering into a settlement agreement.

4. Grant of this Petition clearly would serve the public interest in that it would save substantial time and the resources of the parties and the Commission and hasten the initiation of a new local FM service on Channel 228A in Rosamond, California.

WHEREFORE, for the reasons set forth hereinabove, the parties hereto respectfully submit that this Petition should be granted.

Respectfully submitted,


Thomas Schattenfield


Susan A. Marshall

Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000

Counsel for Rosamond Radio, Inc.


John F. Garziglia, Esquire
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

Counsel for Diane K. Hitt

Date: June 30, 1992

EXHIBIT 1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between Rosamond Radio, Inc. ("Rosamond") and Diane K. Hitt ("Hitt") to be effective as of the 30th day of June, 1992.

W I T N E S S E T H:

WHEREAS, Rosamond and Hitt each have pending before the Federal Communications Commission ("FCC") applications for a construction permit for a new FM radio broadcast station to operate on Channel 228A at Rosamond, California (FCC File Nos. BPH-910225MG and BPH-910225MI, respectively), which applications are mutually exclusive with one another and with the application filed by Jamie Leigh Coberly (File No. BPH-910225MH);

WHEREAS, the aforementioned mutually exclusive applications have been designated for hearing in MM Docket No. 92-121; and

WHEREAS, the dismissal of Hitt's application would serve the public interest by expediting the proceeding in MM Docket No. 92-121, thereby conserving the resources of the parties and the FCC and hastening earlier institution of a new FM radio service at Rosamond, California.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

1. In consideration for Hitt dismissing her application for a new FM station on Channel 228A at Rosamond, California, Rosamond shall pay Hitt the sum of Twenty-Thousand Eight-Hundred Seventy-Nine Dollars and Forty-Two Cents (\$20,879.42), or such lesser amount as the Commission may approve, as reimbursement

for Hitt's legitimate and prudent expenses incurred in connection with the filing and prosecution of her application for the Rosamond station (the "Settlement Payment") within ten (10) days after an FCC action dismissing Hitt's application with prejudice becomes a "Final Action," as that term is defined in Section 4 hereof ("Due Date"). The Settlement Payment will be made in the following manner:

a. Within ten (10) days after the filing of the Joint Petition referred to in paragraph 2 hereof, Rosamond will deposit a check in the amount of the Settlement Payment ("Escrow Deposit") with Thomas Schattenfield of the law firm of Arent, Fox, Kintner, Plotkin & Kahn as escrow agent ("Escrow Agent"). Upon receipt of the Escrow Deposit, Thomas Schattenfield shall notify counsel for Hitt by telecopy or first class mail that the Escrow Deposit has been received and shall identify the bank in which the escrow account has been established.

b. On the Due Date, the Escrow Agent shall deliver to the attorney of record for Hitt a check payable to Hitt for the full amount of the Settlement Payment. Any interest earned on the Escrow Deposit will be paid to Rosamond.

2. The parties hereto shall file with the FCC on or before July 1, 1992, a Joint Petition pursuant to Section 73.3525 of the FCC's Rules, together with such other documents as may be required by that section, requesting that the FCC approve this Agreement and dismiss Hitt's application with prejudice. The parties shall cooperate fully with one another and take whatever

additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, this Agreement.

3. The obligations of the parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" within the meaning of Section 4 hereof, approving this Agreement and dismissing Hitt's application with prejudice.

4. For the purposes of this Agreement, an action by the FCC approving this Agreement shall be a "Final Action" when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

6. The parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

7. Unless otherwise provided for in this Agreement, all notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested,

postage prepaid and pending the designation of another address,
addressed as follows:

If to Rosamond Radio, Inc.:

P. Dale Ware, Ph.D.
2818 Gus Court
Lancaster, CA 93536

With copy to:

Thomas Schattenfield, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

If to Diane K. Hitt:

Ms. Diane K. Hitt
18515 East Avenue H-6
Lancaster, CA 93535

With copy to:

John F. Garzigila, Esquire
Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006

8. This Agreement constitutes the entire understanding of the parties and no other consideration, action or forbearance is contemplated or relied upon by them.

9. Should the parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

10. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and assigns.

11. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by all of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

ROSAMOND RADIO, INC.

By:

P. Dale Ware 6-30-92
P. Dale Ware, Ph.D., President

DIANE K. HITT

11. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by all of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

ROSAMOND RADIO, INC.

By: F. Dale Ware, Ph.D., President

DIANE K. HITT

Diane K. Hitt

EXHIBIT 2

DECLARATION OF P. DALE WARE, PH.D.

DECLARATION UNDER PENALTY OF PERJURY

P. Dale Ware, Ph.D., hereby declares under penalty of perjury:

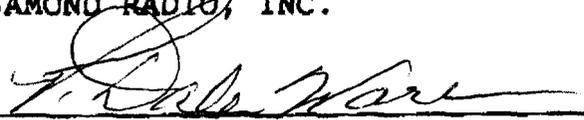
1. I am President of Rosamond Radio, Inc. ("Rosamond"), an applicant for a new FM station to operate on Channel 228A, Rosamond, California (File No. BPH-910225MG).

2. Rosamond's application was not filed for the purpose of reaching or carrying out a settlement with any other mutually exclusive application for the Rosamond, California FM station.

3. Neither I nor anyone else representing Rosamond has paid or promised to pay, orally or in writing, money or any other thing of value in connection with the proposed dismissal of the application of Diane K. Hitt ("Hitt") for Channel 228A, in Rosamond, California (File No. BPH-910225MI), other than the proposed reimbursement of Hitt's legitimate and prudent expenses as set out in the foregoing Settlement Agreement and as approved by the FCC.

4. Approval of the Settlement Agreement between Rosamond and Hitt will serve the public interest by saving substantial time and the resources of the parties and the FCC and hastening the initiation of a new local FM service at Rosamond, California.

ROSAMOND RADIO, INC.

By 
P. Dale Ware, Ph.D., President

6-30-72
Date

EXHIBIT 3

DECLARATION OF DIANE K. HITT

DECLARATION

I, Diane K. Hitt, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. Other than the consideration described in the settlement agreement between Diane K. Hitt and Rosamond Radio, Inc., neither I nor anyone connected with me has been paid or promised any money or other consideration of any kind in connection with the dismissal of my application for a new FM broadcast station at Rosamond, California.

2. My application was not filed for the purpose of reaching or implementing a settlement agreement.

3. The proposed settlement is in the public interest as it would speed the initiation of a new local FM service on Channel 228A at Rosamond, California.

4. The nature of the consideration to be paid to me is a check in the amount of \$20,879.42 for the reimbursement of my legitimate and prudent expenses incurred in connection with the preparation and prosecution of my application for a new FM station at Rosamond, California. Attached to this Declaration is an itemization of the expenses for which I am seeking reimbursement.

5. No other oral or ancillary agreement exists with respect to the dismissal of my application.

Executed this 30th day of June, 1992.

Diane K. Hitt

Attachment

Expenses incurred in the filing and the prosecution of the application of Diane K. Hitt:

<u>Company</u>	<u>Amount Spent</u>
Aviation Systems (consultant for FAA approval for tall tower)	\$ 1,299.60
Newspaper ads	360.00
FCC application filing fee	2,030.00
Legal fees to Booth, Freret & Imlay	1,731.70
Legal fees to Pepper & Corazzini	4,785.18
Engineering fees to Gary Engineering	5,944.00
Engineering fees to Larry Morton & Associates	<u>4,728.94</u>
Total	\$20,879.42

INVOICE
AVIATION SYSTEMS ASSOCIATES, INC.
 23430 HAWTHORNE BOULEVARD
 SKYPARK 3, SUITE 200
 TORRANCE, CA 90505
 (310) 378-3299

INV. DATE January 11, 1992

INV. NO. **12085** Page 1 of 1

BILL TO: Diane Hitt
Valley Mobile Communicaitons, Inc.
44830 N. Elm
Lancaster, CA 93534-4898
ATTN: Mr. Bruce Gary

EXPERTS:
Byron Linden

CASE REFERENCE: Our file #1523 - Willow Springs

TERMS: **NET 30**

DATE	SERVICE RENDERED	DESCRIPTION	CALCULATED TIME	TIME CHARGE PER HOUR	AMOUNT
12/1991	Consultation	Byron Linden Numerous calls to FAA AWP-530 re status of study. Eventually notified study was to circularized for public comment. Rec'd circularization and reviewed comments.	2.0	\$ 100.00	\$ 200.00

EXCESSIVE	TELEPHONE \$ 0.00 (w/ FAX)	TRAVEL \$ 0.00	LOCAL MILEAGE \$ 0.00	POSTAGE/EXPRESS MAIL \$ 0.00	\$ 0.00
	QUAD CHARTS \$ 0.00	GOVT. DOCUMENTS \$ 0.00	OTHER (DESCRIBE)	\$ 0.00	\$ 0.00

PURCHASE ORDER # _____

PAID

*AV Bank
1-7-92
#1980*

TOTAL \$ 200.00
 Past Due: \$ 851.00

Total Due this Invoice: \$ 1051.00

ASA TAX ID: 95-3405669

INVOICE
AVIATION SYSTEMS ASSOCIATES, INC.
 23430 HAWTHORNE BOULEVARD
 SKYPARK 3, SUITE 200
 TORRANCE, CA 90505
 (310) 378-3299

INV. DATE February 15, 1992

INV. NO. **12116** Page 1 of 1

BILL TO: Diane Hitt
 Valley Mobile Communicaitons, Inc.

 44830 N. Elm

 Lancaster, CA 93534-4896

 ATTN: Mr. Bruce Gary

EXPERTS: Byron Linden

CASE REFERENCE: Our file #1523 - Willow Springs

TERMS: NET 30

DATE	SERVICE RENDERED	DESCRIPTION	CALCULATED TIME	TIME CHARGE PER HOUR	AMOUNT
01/1992	Administrative	Christine Venrick Clerical	0.5	\$ 48.00	\$ 24.00
01/1992	Consultation	Byron Linden Prepared correspondence to FAA in support of No Hazard Determination. Provided copy to client.	1.0	\$ 100.00	\$ 100.00

PAID
 3-10-92
 # 2023

EXPENSE	TELEPHONE \$ 0.00 (w/ FAX)	TRAVEL \$ 0.00	LOCAL MILEAGE \$ 0.00	POSTAGE/EXPRESS MAIL \$ 0.00	\$ 0.00
	QUAD CHARTS \$ 0.00	GOV'T. DOCUMENTS \$ 0.00	OTHER (DESCRIBE)	\$ 0.00	\$ 0.00

PURCHASE ORDER # _____

TOTAL \$ 124.00
 Past Due: \$ 200.00

Total Due this Invoice: \$ 324.00

ASA TAX ID: 95-3405669

INVOICE
AVIATION SYSTEMS ASSOCIATES, INC.
 23430 HAWTHORNE BOULEVARD
 SKYPARK 3, SUITE 200
 TORRANCE, CA 90505
 (310) 378-3299

INV. DATE March 10, 1992

INV. NO. **12166** Page 1 of 1

BILL TO: Diane Hitt
 Valley Mobile Communicaitons, Inc.
 44830 N. Elm
 Lancaster, CA 93534-4886
 ATTN: Mr. Bruce Gary

EXPERTS: Byron Linden

CASE REFERENCE: Our file #1523 - Willow Springs

TERMS: NET 30

DATE	SERVICE RENDERED	DESCRIPTION	CALCULATED TIME	TIME CHARGE PER HOUR	AMOUNT
02/1992	Administrative	Christine Venrick Clerical	0.5	\$ 48.00	\$ 24.00
02/1992	Consultation	Byron Linden Rec'd No Hazard Determination from FAA. Reviewed terms and conditions. Copy to client w/ letter of explanation.	1.0	\$ 100.00	\$ 100.00

PAID
A.V. BANK
6-29-92
2119

EXPENSES	TELEPHONE \$ (w/ FAX) 0.00	TRAVEL \$ 0.00	LOCAL MILEAGE \$ 0.00	POSTAGE/EXPRESS MAIL \$ 0.00	\$ 0.00
	QUAD CHARTS \$ 0.00	GOVT. DOCUMENTS \$ 0.00	OTHER (DESCRIBE) \$ 0.00		\$ 0.00

PURCHASE ORDER # _____

TOTAL \$ **124.00**
 Past Due: \$ 324.00
 Total Due this Invoice: \$ 448.00

ASA TAX ID: 95-3405669

LAW OFFICES OF
BOOTH, FRERET & IMLAY

SUITE 204

1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036ROBERT M. BOOTH, JR. (1911-1991)
JULIAN F. FRERET
CHRISTOPHER D. IMLAYTELEPHONE
(202) 296-9100
TELECOPIER
(202) 293 1810

July 1, 1992

Via Facsimile 296-5572

John F. Carsiglia, Esquire
Pepper & Corazzini
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

Re: Ms. Diane Hitt

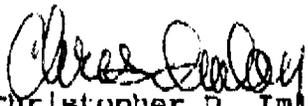
Dear John:

Diane Hitt asked that I send to you the total of our charges to her to date. I understand that you have arrived at a settlement with respect to her application, and that she will be compensated for her expenses in exchange for the dismissal of her application.

Our master ledger sheet indicates that Ms. Hitt was billed, for professional services, and for telephone, xerox and postage expenses, a total amount of \$1731.70 between March and October, 1991. All of that amount was promptly paid by Ms. Hitt. Our professional services rendered included consultation with her concerning the preparation and structure of her application, coordination with her consulting engineer, preparation of the application, review of competing applications, and advice to her concerning strategies to be pursued relative to the anticipated hearing proceeding with competing applicants.

Should you need additional proof of this, please do not hesitate to call. You may use this letter to Ms. Hitt's benefit in any manner necessary.

Yours very truly,


Christopher D. Imlay

cc: Diane Hitt

PEPPER & CORAZZINI

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1776 K STREET, NORTHWEST

WASHINGTON, D. C. 20006

(202) 296-0600

ROBERT LEWIS THOMPSON

GREGG P. SKALL

E. THEODORE MALLYCK

OF COUNSEL

FREDERICK W. FORD

1909-1986

TELECOPIER (202) 296-5572

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI*
JENNIFER L. RICHTER*

* NOT ADMITTED IN D.C.

June 30, 1992

**Legal Fees and Expenses for
Diane K. Hitt Application**

Legal services rendered in connection with the prosecution of the application of Diane K. Hitt for Channel 228A at Rosamond, California consisting of the following: telephone calls with client regarding FCC application; legal research and filings regarding competing applications; preparation of analysis of competing applicants; correspondence with client relating to FAA approval; correspondence to engineer regarding application; correspondence to client regarding hearing procedures; legal research regarding filings made by competing applicants; correspondence to client regarding release of hearing designation order; and preparation for hearing.

Legal services including miscellaneous administrative costs for telecopy, telephone, federal express, duplication, postage and research materials

\$4,785.18

PEPPER & CORAZZINI

By:



John F. Garziglia
Counsel to Diane K. Hitt

Gary Engineering

44830 N. ELM

LANCASTER, CA 93534-4896

(805) 945-4413

June 29, 1992

Ms. Diane Hitt
18518 East Avenue H-6
Lancaster, California 93535

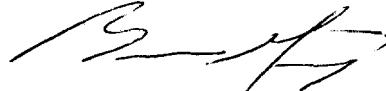
Dear Ms. Hitt:

As you requested, below is a summary of the charges incurred regarding your application for a new FM radio station in Rosamond, California.

1. Search of Kern County records of property ownership in that area.
2. Acquiring legal description and ownership of property in general vicinity of where station would be located.
3. Securing tentative lease agreement with Linda and Ray Laughinghouse, owners of said property, for transmitter and tower location.
4. Obtaining the exact coordinates using the USGS 7.5 minute map.
5. Enlisting Lawrence L. Morton Associates to complete your engineering.
6. Enlisting Aviation Systems Associates, Inc. to acquire FAA approval because of tower height in excess of 500 feet.

Total time involved: 118 hours at \$50.00 per hour,
plus out-of-pocket expenses is a total charge of
\$5944.00.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce Gary", written in a cursive style.

Bruce Gary



LAWRENCE L. MORTON ASSOCIATES

1231 MESA OAKS LANE
MESA OAKS, CALIFORNIA 93436
(805) 733-4275 / FAX (805) 733-4793

June 27, 1992

Via: Facsimile Transmission

John F. Garziglia, Esquire
Pepper & Corazzini
1776 K Street, N.W.
Washington, D.C. 20006

RE: Engineering Fees in Connection With Diane Hitt Application

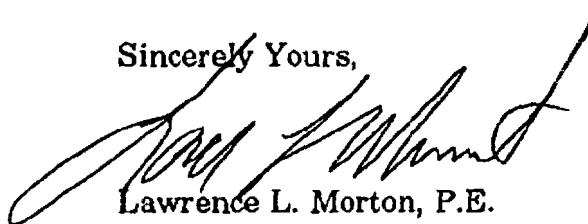
Dear John:

I have reviewed my records to determine the exact amount of the fees collected from Ms. Diane K. Hitt in connection with her commercial FM application for Rosamond, California.

The total amount billed and received from Ms. Hitt from the beginning of 1991 to present is \$4728.94. This includes technical studies to determine the feasibility of numerous potential sites, telephone consultation and preparation of the engineering portion of the FCC Form 301 and associated engineering exhibits.

If you have any questions or need additional information, please let me know.

Sincerely Yours,



Lawrence L. Morton, P.E.

cc: Ms. Diane K. Hitt

CERTIFICATE OF SERVICE

I, JoAnn Felix, do hereby certify that I have this 1st day of July, 1992, caused to be sent by first class United States mail, postage prepaid, or by hand delivery, copies of the foregoing "JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT" to the following:

* Administrative Law Judge Joseph P. Gonzalez
Federal Communications Commission
2000 L Street, N.W.
Room 221
Washington, D.C. 20554

* Gary Schonman, Esquire
Federal Communications Commission
Mass Media Bureau
Hearing Branch
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

Arthur V. Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, D.C. 20036
Counsel for Jamie Lee Coberly

John F. Garziglia, Esquire
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for Diane K. Hitt



JoAnn Felix

July 1, 1992

* By Hand