

Before the
 JUL 8 10 20 AM '96 FEDERAL COMMUNICATIONS COMMISSION FCC 96M-168
 Washington, D.C. 20554 61715

In the Matter of) WT Docket No. 95-26
)
 Commercial Realty St. Pete, Inc.,)
 James C. Hartley, Teresa Hartley,)
 and Ralph E. Howe)

MEMORANDUM OPINION AND ORDER

Issued: June 28, 1996 ; Released: July 2, 1996

1. Under consideration is an unopposed Motion for Settlement Agreement, filed on June 18, 1996, by the Wireless Telecommunications Bureau ("Bureau").

Background

2. On July 28 and 29, 1994, the Commission held an auction for IVDS licenses. Commercial Realty St. Pete, Inc. ("CRSPI"), was the successful bidder in 20 IVDS markets. CRSPI is a for-profit company incorporated in Florida. From the time of its incorporation until 1989, James C. Hartley served as CRSPI's sole director, president, and registered agent. In February 1994, Mr. Hartley's wife, Teresa Hartley, purchased all of the outstanding shares of stock in CRSPI. Until at least February 1995, Ralph E. Howe was identified on company documents filed with the Florida Department of State as a current director, president, and registered agent of CRSPI.

3. As a winning bidder in the IVDS auction, CRSPI was required to make a down payment on its successful bids on August 8, 1994. CRSPI did not do so and, therefore, was in default. After the conclusion of the IVDS auction, it came to the Commission's attention that the Commission's rules and other IVDS auction requirements may have been violated by some of the participants. Consequently, the Commission ordered an investigation into the conduct of the applicants in the IVDS auction to determine whether any misconduct occurred. One target of the investigation was CRSPI. As a result of this investigation, the Commission, inter alia, issued an Order to Show Cause, FCC 95-59, released February 16, 1995 ("OSC"), designating this case for hearing.

4. In the OSC, the Commission ordered CRSPI and its principals, namely, James C. Hartley, Teresa Hartley, and Ralph E. Howe, to show cause why they should not be barred from participating in any future Commission auctions and from holding Commission licenses. The Commission specified issues to determine whether CRSPI or its principals misrepresented facts, lacked candor, or attempted to mislead the Commission with respect to certain declarations submitted to the Commission (Issue 1); to determine whether CRSPI or its principals misrepresented facts, lacked candor, or attempted to mislead the Commission in claiming a bidding credit as a woman-owned small business (Issue 2); to determine whether CRSPI or its principals' "improper communication" with another successful IVDS bidder should bar CRSPI or its principals from future auctions and from holding Commission licenses (Issue 3); and to determine whether CRSPI or its principals abused the Commission's processes by sending a letter by facsimile to other successful IVDS auction bidders and by issuing a press release (Issue 4).

5. Prehearing conferences were held on March 29 and July 21, 1995. The hearing was scheduled to begin on September 12, 1995. However, prior to the commencement of the hearing, CRSPI, the Hartleys, and the Bureau reached an agreement in principle on the settlement of those aspects of this case affecting CRSPI and the Hartleys. A Joint Motion for Approval of Agreement was filed by CRSPI, the Hartleys, and the Bureau on October 19, 1995. By Memorandum Opinion and Order, FCC 95M-204, released November 1, 1995, the Joint Motion was granted and the settlement agreement among those parties was approved. Since that time, settlement negotiations between the Bureau and Mr. Howe have continued. On June 8, 1996, a settlement between Mr. Howe and the Bureau was achieved. The instant Motion followed.

Motion for Approval of Agreement

6. In its Motion, the Bureau seeks approval of an Agreement of Settlement into which the Bureau and Mr. Howe have entered. Pursuant to the Agreement, Mr. Howe, for a period of three years, will not participate in any FCC auction proceeding, apply for any additional FCC licenses, hold a five percent or greater attributable ownership interest in any FCC licensee, or operate or control any such licensee. In addition, the Agreement specifies that Mr. Howe's participation in the settlement "is without prejudice to any petition for reconsideration and/or appeal to the courts" from the Commission's Memorandum Opinion and Order, FCC 95-367, released September 1, 1995 ("MO&O").¹ Further, should an appeal of this MO&O be successful, and should an appellate authority direct the Commission to consider the applications of CRSPI, Mr. Howe has agreed that, when and if such applications are the subject of an FCC public notice or notices accepting such applications for filing, the Commission shall evaluate the fitness of CRSPI and its principals, including Mr. Howe, to be awarded such licenses at that time, prior to action on those applications. This evaluation may include the issues designated for hearing in this proceeding, as well as other issues relevant to CRSPI's fitness to hold a Commission license. Finally, the Agreement specifies that Mr. Howe does not admit to any wrongdoing in connection with the matters which are the subject of the instant proceeding, and that the Agreement does not affect the rights or obligations of the parties with respect to a Notice of Apparent Liability for Forfeiture, FCC 95-58, released by the Commission on February 16, 1995 ("NAL").

7. The Bureau's Motion will be granted and the Agreement of Settlement approved. Suffice it to say, it appears that the Agreement is in the public interest and would serve to preserve the integrity of the Commission's IVDS auction rules. Specifically, the remaining alleged wrongdoer, Mr. Howe, will be precluded from participating in any auction, or from applying for any Commission license, for a period of three years. Nor will he be permitted to hold a five percent or greater attributable ownership interest in, or operate or control, a Commission licensee for the same period of time. More importantly, if in the future Mr. Howe does seek to become a licensee, the Commission may, at that time, evaluate his fitness, and that evaluation may include the allegations which are

¹ 10 FCC Rcd 12153 (1995). In this MO&O, the Commission denied an application for review of an order denying CRSPI's request for an extension of the IVDS down payment deadline.

the subject matter of this proceeding. In addition, it is noted that the Commission generally encourages the parties to adjudicatory proceedings to settle their differences on a mutually agreeable basis, since eliminating the need for further litigation and the expenditure of the time and resources of the Commission is in the public interest. See, e.g., Longview Cable TV Company, Inc., et al. v. Southwestern Electric Power Company, 5 FCC Rcd 686 (1990); see also Public Notice, "FCC Waives Limitations on Payments to Dismissing Applicants," 10 FCC Rcd 12182 (1995). Finally, with the approval of the Agreement, there remain no further matters which require resolution at a hearing. Consequently, this proceeding will be terminated.

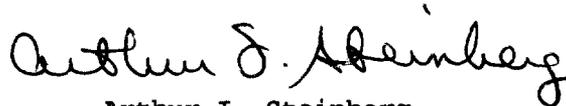
Accordingly, IT IS ORDERED that the Motion for Settlement Agreement, filed by the Bureau on June 18, 1996, IS GRANTED, and the Agreement of Settlement entered into by Mr. Howe and the Bureau on June 8, 1996, IS APPROVED.

IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE MAILED to:

Ralph E. Howe
1333 Monterey Blvd. N. E.
St. Petersburg, FL 33704

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge