ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	MM Docket No. 10-157
	)	
EDDIE FLOYD	)	NAL/Acct. No. 201041410018
	)	
Licensee of FM Translator Station K273AF, Carson, City, Nevada	)	FRN: 0011733425
	)	Facility ID No. 13529
	)	
EDDIE FLOYD	)	
	)	
and	)	
	)	
WILKS LICENSE COMPANY-RENO LLC	)	File No. BALFT-20070904ACU
	)	
For Assignment of License of FM Translator Station K273AF, Carson City, NV	)	
	)	
EDDIE FLOYD	)	File No. BMLFT-20071218ABH
	)	
For Modification of License of FM Translator Station K273AF, Carson City, NV	)	

FILED/ACCEPTED

SEP - 1 2010

Federal Communications Commission
Office of the Secretary

To: Chief Administrative Law Judge
Richard L. Sippel

MOTION FOR VOLUNTARY DISMISSAL AND TO
REMOVE WILKS LICENSE COMPANY-RENO LLC AS A PARTY

Wilks License Company-Reno LLC ("Wilks"), by its attorneys, hereby moves that the application for Assignment of License of FM Translator Station K273AF, Carson City, Nevada (the "Station"), File No. BALFT-20070904ACU (the "Assignment Application"), be dismissed and that Wilks be removed as a party to the above-captioned proceeding.

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1. On July 23, 2007, Wilks entered into an Asset Purchase Agreement (the "APA") with Walter Edward Floyd ("Eddie Floyd"), which contemplated, subject to prior consent of the Federal Communications Commission (the "FCC"), the assignment of license of the Station to Wilks. The Assignment Application seeking the FCC's consent to that assignment was submitted on September 4, 2007. See File No. BALFT-20070904ACU.

2. On August 5, 2010, the Commission issued its "Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability for a Forfeiture" which, among other things, designated the Assignment Application for evidentiary hearing to determine whether the Assignment Application should be granted.

3. Section 7 of the APA provides, in pertinent part, that "This Agreement may be terminated at any time prior to the Closing as follows:

> . . .
>
> (c) by written notice of a party to the other party, if the Closing shall not have occurred by the first anniversary from the filing of the Assignment Application."

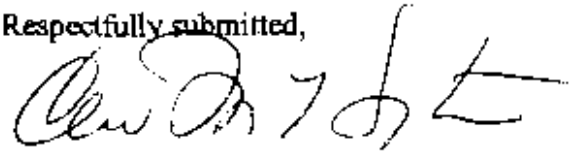
See Attachment A.

4. On August 17, 2010, Wilks gave written notice to Eddie Floyd of the termination of the APA pursuant to Section 7. *See* Attachment B. Such termination was effective immediately. Wilks has no further interest in prosecuting the Assignment Application, and, given the termination of the underlying APA, it is respectfully requested that the Chief Administrative Law Judge dismiss the pending Assignment Application and terminate the portion of the hearing dealing with the Assignment Application as moot.

5. Under the circumstances, Wilks has no further interest in the outcome of this proceeding. It therefore respectfully requested that it be removed as a party in interest in this proceeding.

For the above reasons, Wilks respectfully moves the Chief Administrative Law Judge to dismiss the pending Assignment Application, terminate that portion of the hearing dealing with the Assignment Application, and remove Wilks as a party in interest in this proceeding.

Respectfully submitted,



Clifford M. Harrington
Paul A. Cicelski
Counsel for Wilks License Company-Reno LLC

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
(202) 663-8000

Dated: September 1, 2010

Attachment A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the 23rd day of July, 2007, by and between Walter Edward Floyd, Jr. ("Seller") and Wilks Broadcast-Reno LLC ("Buyer").

Background

WHEREAS, Seller holds a License (the "Permit") issued by the Federal Communications Commission ("FCC") for FM Translator Station K273AF, Carson City, NV (Facility ID No. 13529) (the "Station"); and

WHEREAS, subject to FCC consent, Seller wishes to sell the Permit for the Station to Buyer, and Buyer wishes to purchase same from Seller.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, representations and covenants contained herein, the parties, intending to be bound legally, subject to the terms and conditions set forth herein agree as follows:

1. **Assignment and Sale of Permits.**

a. Subject to the terms and conditions set forth in this Agreement, Seller agrees to convey, transfer, and assign to Buyer at the Closing (as defined in Section 3) all of Seller's right, title and interest in and to the Permit for the Station (copies of which are annexed hereto in Schedule 1). Seller shall also assign all other assets associated with or necessary for the operation of the Station as more particularly described in Schedule 1A including any necessary leases and third party consents.

b. The consideration to be paid for the Permit shall be Fifty Thousand Dollars ($50,000). Ten Thousand Dollars ($10,000) shall be paid by Buyer to Seller on the date hereof to be held in escrow as a downpayment (the "Deposit"). At Closing, the Deposit may be retained by Seller and applied against the Purchase Price and the balance of the Purchase Price shall be paid at the Closing by cashier's check or wire transfer. In the event this Agreement is terminated for any reason, other than pursuant to Section 7(b) as a result of a material breach by Buyer, the Deposit shall be returned to Buyer. If this Agreement is terminated pursuant to Section 7(b) as a result of a material breach by Buyer, then the Deposit shall be retained by Seller as its sole and exclusive remedy and as liquidated damages and not as a penalty, and Buyer shall have no further liability or obligation hereunder.

2. **FCC Consent**. Within three (3) business days of the execution of this Agreement, the parties shall file an application (the "Assignment Application") for FCC consent to the assignment of the Permit for the Station (the "FCC Consent"). ~~Each party~~ Buyer shall be responsible for ~~its own~~ all costs relating to the preparation of the Assignment Application. As a commercial entity, Buyer shall be responsible for payment of all FCC filing fees. Buyer and Seller agree to proceed expeditiously and with due diligence to use their best efforts to cooperate with each other in seeking the FCC's approval of the transaction contemplated herewith.

3. **Closing**. Within ten (10) business days after the FCC Consent in an FCC public notice becomes final, that is no longer subject to appeal or review, the parties shall consummate the transaction contemplated by this Agreement at a closing (the "Closing"); provided, however, Buyer, in its sole discretion, may consummate the transaction on grant of FCC consent prior to finality. At, and as a condition precedent to, the Closing, Seller shall deliver to Buyer a Bill of Sale and an Assignment of Construction Permit and any other documents of conveyance, all in a form reasonably requested by Buyer and necessary to consummate the transaction contemplated by this Agreement. Buyer and Seller shall each deliver to the other a certificate executed by an officer or managing member of the respective companies certifying that the representations and warranties of such party contained herein are true and correct as of the Closing Date, as if made on such date.

4. **Pre-Closing Covenants**. Should Buyer wish to modify the facilities of the Station prior to Closing, Seller will cooperate in the filing of such applications and provide written permission to Buyer for filing with the FCC, as necessary; however, Buyer shall be responsible for the payment of all legal and engineering costs associated with such filings. The parties will cooperate fully with each other in fulfilling their respective obligations under this Agreement, including using their respective reasonable best efforts to obtain the required FCC Consent.

5. **Condition Precedent to Closing**. The parties acknowledge and agree that the FCC Consent to the assignment of the Permit from Seller to Buyer is a condition precedent to the Closing provided that such Consent is final, that is, no longer subject to reconsideration or appeal.

6. **Representations and Warranties**. Each party hereto expressly represents and warrants that it has the full power and authority to enter into and execute this Agreement. Subject only to the FCC Consent, there is no constraint upon either party's legal ability to perform its responsibilities hereunder. Seller represents and warrants to Buyer that no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement as a result of any action taken by Seller. Buyer represents and warrants to Seller that no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement as a result of any action taken by Buyer. Seller represents and warrants to Buyer that the Permit has been validly issued by the FCC in connection with the Station and that it is not subject to any restriction or condition that would limit the operation of the Station. Seller further warrants that the authorizations as well as other assets to be conveyed hereunder shall be unencumbered in any way and shall be free and clear of all claims.

7. **Termination**. This Agreement may be terminated at any time prior to the Closing as follows:

a. by mutual written consent of Buyer and Seller; or

b. by written notice from a party that is not then in material breach of this Agreement if the other party has failed to cure its material breach of any of its

representations, warranties or covenants under this Agreement within thirty (30) days after receipt of written notice of such breach from the party not in material breach; or

c. by written notice of a party to the other party, if the Closing shall not have occurred by the first anniversary from the filing of the Assignment Application, provided, however, that if the Closing shall not have occurred because the FCC Consent shall not have been granted, this Agreement may not be terminated by a party who materially contributed to the delay in the issuance of the FCC Consent.

8. **Effect of Termination**.

a. If this Agreement is terminated by the parties pursuant to Section 7(a) or (c), then neither party shall have any further liability to the other, and this Agreement shall be deemed null and void and of no further force and effect.

b. If this Agreement is terminated by Seller or Buyer pursuant to Section 7(b), subject to Section 9(a) hereof, that party shall have all rights to pursue any remedy available to it for breach.

9. **Miscellaneous**.

a. **Specific Performance**. The parties recognize that if Seller refuses to perform its obligations under this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law and to interpose no opposition to the propriety of specific performance as a remedy. Buyer's right to seek specific performance shall be an alternative to and not additional to the exercise of any other remedies available to Buyer at law.

b. **Notices**. All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by overnight air courier service (charges prepaid), or personal delivery to the appropriate party at the address specified below (or to such other address which a party shall specify to the other party in writing):

If to Seller:

Walter Edward Floyd, Jr.
405 Apples Street
Reno, NV 89502

If to Buyer:

Wilks Broadcast-Reno LLC
c/o Jeff Wilks
Fax: 770-408-6388

With copy (which shall not constitute notice) to:

Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue, 40th Floor
New York, NY 10022
Attention: Lawrence R. Haut, Esq.

Each party may change its address for notice purposes by providing written notice in accordance with this Section.

c. **Assignment and Binding Effect**. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, except that Buyer may assign its rights and obligations under this Agreement without the prior consent of Seller to any business entity which owns and controls Buyer, which Buyer owns and controls or which is owned and controlled by the same entity which owns and controls Buyer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

d. **Governing Law**. Except to the extent governed by federal law, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Nevada, without regard to the choice of law provisions thereof.

e. **Counterparts**. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

f. **Entire Agreement**. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiation, memoranda and agreements between the parties with respect to the subject matter hereof, and may not be altered, changed, modified or amended except by a written instrument signed by each of the parties hereto.

g. **No Waiver**. No provision or condition of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

h. **Other and Further Documents**. The parties hereto agree to execute, acknowledge and deliver, before, at or after the Closing, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement.

i. **Good Faith**. All parties hereto shall act with reasonable diligence, and in good faith, in performing and discharging their respective duties and obligations hereunder.

j. **Headings and Cross References**. Headings of the sections have been included for convenience of reference only and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross references to sections herein shall mean the section of this Agreement unless otherwise stated or clearly required by the context.

k. **Litigation Expenses**. If a formal legal proceeding is instituted by a party to enforce that party's rights under this Agreement, the prevailing party in the proceeding shall be reimbursed by the other party for all reasonable costs incurred thereby, including but not limited to reasonable attorney's fees.

l. **Expenses**. Except as otherwise provided herein, each party shall be solely responsible for all fees and expenses each party incurs in connection with the transaction contemplated by this Agreement, including, without limitation, legal fees incurred in connection herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WALTER EDWARD FLOYD, JR.

By: Walter E Floyd Jr by POA
Walter Edward Floyd, Jr.

WILKS BROADCAST-RENO LLC

By: _____
Stephen Bradshaw

LICENSE RENEWAL AUTHORIZATION

THIS IS TO NOTIFY YOU THAT YOUR APPLICATION FOR RENEWAL OF LICENSE, BRFT-20060515ADO, WAS GRANTED ON 01/31/2007 FOR A TERM EXPIRING ON 10/01/2013.

THIS IS YOUR LICENSE RENEWAL AUTHORIZATION FOR STATION KZTAM.

FACILITY ID: 13329

LOCATION: CARSON CITY, NV

THIS CARD MUST BE POSTED WITH THE STATION'S LICENSE CERTIFICATE AND ANY SUBSEQUENT MODIFICATIONS.

EDDIE FLOYD
405 APPLE ST.
RENO, NV 89502

FCC Regulatory Fee Notification For:

FACILITY ID 13629

[redacted]

[redacted]

CARSON CITY

[redacted]

[redacted]

[redacted]

Attachment B

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Clifford M. Harrington
tel 202.663.8525
clifford.harrington@pillsburylaw.com

August 17, 2010

Walter Edward Floyd, Jr.
405 Apples Street
Reno, NV 89502

Dear Mr. Floyd:

Wilks Broadcast – Reno LLC ("Wilks") hereby terminates the Asset Purchase Agreement (the "Agreement"), dated July 23, 2007, relating to the Permit and related assets of FM Translator Station K273AF, Carson City, Nevada, pursuant to Section 7(c) of that Agreement. Capitalized terms used herein and which are not otherwise defined shall have the meaning set forth in the Agreement.

Section 7(c) of the Agreement provides that the Agreement may be terminated at any time prior to the Closing by written notice of a party to the other party if the Closing shall not have occurred by the first anniversary from the filing of the Assignment Application. The Assignment Application was filed with the FCC on September 4, 2007. See FCC File No. BALFT-20070904ACU. The Closing has not yet taken place, and the one year anniversary of the filing of the Assignment Application occurred on September 4, 2008, nearly two years ago. Therefore, the Agreement is subject to termination pursuant to Section 7(c) of the Agreement. The purpose of this letter is to notify you of such termination by Wilks.

Under Section 8, if the Agreement is terminated pursuant to Section 7(c), then neither party shall have further liability to the other, and the Agreement shall be null and void and of no further force and effect.

You are obligated under Section 1(b) of the Agreement to return the Ten Thousand Dollar ($10,000) Deposit to Wilks. Under Section 1(b) the Deposit was to have been held in escrow by you, and to be returned to Buyer (Wilks) in the event of termination of the Agreement. Please forward the Deposit to the undersigned and I will provide it to Wilks.

It is Wilks intention to request the FCC to promptly dismiss the pending Assignment Application, as Wilks has no desire to participate in the pending

administrative hearing involving the Assignment Application. We would like you to join in a request for such dismissal. Please advise me whether you will do so. If we do not hear from you promptly, Wilks intends to request dismissal of the Assignment Application without your participation.

Please contact me if you have any questions. I look forward to receiving a return of the deposit on a prompt basis.

Very truly yours,

Clifford M. Harrington
Counsel to Wilks Broadcast – Reno LLC

CERTIFICATE OF SERVICE

I, Juliu Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "**Motion for Voluntary Dismissal And To Remove Wilks License Company-Reno LLC As A Party**" were served on this 1st duy of September 2010 to the following:

*Hillary S. DeNigro, Chief
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-C330
Washington, D.C. 20554

**Walter Edward Floyd aka Eddie Floyd
405 Apple Street
Reno, NV 89502

**Walter Edward Floyd aka Eddie Floyd
665 Sonth Wells Ave.
Reno, NV 89502

Julia Colish

Julia Colish

*Via hand delivery

**Via U.S. and certified mail