

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

**In Re: Application of Convey Communications Inc. and Green Eagle Networks, Inc.
For Assignment of Authorization of PCS Licenses, File Number 0003926139; Green
Eagle Communications, Inc. Petition for Declaratory Ruling and Request for
Waiver of Section 20.5 (a) of the Commission's Rules**

**PETITION TO DENY APPLICATIONS OF CONVEY COMMUNICATIONS,
INC. AND GREEN EAGLE NETWORKS INC. AND TO DENY, PETITION OF
GREEN EAGLE COMMUNICATIONS, INC. FOR A DECLARATORY RULING
UNDER SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS
AMENDED AND REQUEST FOR WAIVER OF THE COMMISSION'S RULES**

Michael J. Tracy (Tracy) and Tracy Broadcasting Corp. (TBC) (collectively, Petitioners), pursuant to Section 309 of the Communications Act of 1934 as amended (Act), request that the Commission deny the applications of Convey Communications, Inc. (Convey) and Green Eagle Networks, Inc. (Green Eagle Networks) for assignment of licenses of C and F Block personal communications services (PCS) stations in BTA 411, call signs KNLF407 and KNLH752 which serve the geographic area of Scottsbluff, Nebraska and eastern Wyoming. Petitioners also request that the Commission deny Green Eagle Communication, Inc.'s (Green Eagle) petition for declaratory ruling that foreign ownership and Green Eagle in excess of the 25% limitation set forth in section 310 (b)(4) of the Act, and Green Eagle's request for waiver of Section 20.5(a) of the commission's rules as contrary to the public interest. In support of this petition, petitioners respectfully state:

THE PARTIES AND STATEMENT OF FACTS

Convey is the licensee of C and F Block PCS stations serving BTA 411 call signs KNLF407 and KNLH752. Convey proposes to assign these licenses to Green Eagle Networks in an application filed with the Commission on August 6, 2009 and which appeared on the Commission's Public Notice on August 12, 2009. On the same day Green Eagle, a sister corporation to Green Eagle Networks, also filed a petition for a declaratory ruling for approval of foreign ownership in excess of the limits in section 310 (b)(4) and a request for waiver of Section 20.5(a) of the Commission's Rules.

Convey, a Nebraska corporation, is a wholly owned subsidiary of Telemetrix Inc. (Telemetrix), a publicly held corporation whose shares are traded on the pink sheets under the symbol TLXTQ.PK. The William Becker family and its affiliates (the Becker family) are the majority shareholders in Telemetrix. Telemetrix is subject to regulation by the US Securities Exchange Commission (SEC), as well as this Commission. Telemetrix filed a petition for reorganization under Chapter 11 of the US Bankruptcy Code on December 16, 2008 in the US Bankruptcy Court in the District of Colorado but voluntarily dismissed the petition in March, 2009. Telemetrix's petition showed assets having a value of \$183,377.04 and liabilities of \$13,973,175.29. Telemetrix timely notified the SEC that Telemetrix had filed its petition in bankruptcy, but has failed to notify the SEC that it has voluntarily withdrawn this petition. Moreover, Telemetrix has never notified its shareholders that it has voluntarily dismissed its petition in bankruptcy. As a fully reporting company to the SEC, Telemetrix has the obligation to timely notify the SEC and the shareholders of Telemetrix's voluntary dismissal of their petition in bankruptcy. Thus, Telemetrix's trading symbol on the pink sheets currently contain a "Q" indicating to the public and Telemetrix's shareholders that Telemetrix is still in bankruptcy.

In March 2009, Telemetrix voluntarily dismissed its bankruptcy petition after the US Trustee raised questions about the legitimacy of the petition and the legitimacy of the role of the Becker family in the operation of Telemetrix.

Green Eagle Networks is a Delaware corporation and is owned and controlled owned by the majority stockholders of Telemetrix and their affiliates who are members of the Becker family. The members of the Becker family are non-US citizens. Thus, the

majority stockholders in Green Eagle Networks are also non-US citizens. Green Eagle is a Delaware corporation likewise owned by the members of the Becker family, all non-US citizens. Green Eagle filed a petition for declaratory ruling and the request for waiver simultaneously with the application for assignment of the PCS licenses held by Convey.

Tracy is a stockholder in Telemetrix, as well as a very large creditor of Telemetrix. Tracy was formerly an officer and director of Telemetrix and resigned those posts in 2004. TBC is a large creditor of Telemetrix and is solely owned by Tracy. Tracy was a member of the Telemetrix's unsecured creditors' committee formed in connection with Telemetrix's bankruptcy.

On July 2, 2009, Telemetrix reported to the SEC in a public filing on Form 8 that Telemetrix had sold certain of its assets to Green Eagle pursuant to a foreclosure, effective June, 26, 2009 allegedly in satisfaction of debt owing to Green Eagle in the approximate amount of \$975,000. Telemetrix reported that these assets include equipment, three patents and a billing system. Telemetrix also reported in the Form 8 that it had agreed on June 26, 2009 to sell its PCS licenses and associated roaming agreements, and all the land, towers and antennas Telemetrix owns along with related equipment to Green Eagle, in exchange for the tender for approximately \$3,000,000 in outstanding debt owed by Telemetrix to Green Eagle. Additionally, in the Form 8, Telemetrix stated that it had negotiated an "ongoing ability" to utilize the network being purchased by Green Eagle, but did not further describe this agreement. Telemetrix's Form 8 described Green Eagle as secured creditor of Telemetrix. A copy of Telemetrix's Form 8 filed with the SEC is attached as Exhibit A.

None of Telemetrix's reports to the SEC, however, have ever identified Green Eagle as a secured creditor, let alone has Telemetrix submitted any security agreement between Telemetrix and Green Eagle or, indeed, any member of the Becker family or other creditor. The SEC requires such agreements to be filed by companies subject to its regulation as a part of its reporting system, particularly since such agreements are material to the operations of a publicly held company. Moreover, this Commission requires such agreements to be filed in order to ensure that no unauthorized transfer of control of the licensee occurs in the event of a foreclosure of licensee's assets because of a default on outstanding debt. In any event, Telemetrix had the obligation to file any security agreement involving non-US citizens in light of the Commission's approval in September 2006 of application file number 0002156736 and Telemetrix's petition for declaratory ruling requesting a level of foreign ownership of 70.76% in connection with that application. Green Eagle cites this application in its petition for declaratory ruling at pp. 3-4. The Commission's records do not show that Telemetrix ever filed any security agreement between Green Eagle or any other creditor with foreign ownership involving Telemetrix's or Convey's assets. Telemetrix's petition for Chapter 11 bankruptcy also did not disclose Green Eagle as a secured creditor or unsecured creditor. Telemetrix's notification to the SEC also mentioned Green Eagle Networks but did not explain the role of Green Eagle Networks in the transactions. Neither Green Eagle's petition for declaratory ruling or the request for waiver refer to Green Eagle Networks. Likewise, the application does not inform the Commission about the "on-going ability" of Telemetrix to utilize the licenses being assigned in connection with the transaction.

On August 6, 2009, Convey and Green Eagle Networks filed their application for assignment of the PCS stations, Green Eagle filed a petition for a declaratory ruling that foreign ownership in Green Eagle in excess of the twenty-five (25%) benchmark set forth in Section 310(b)(4) of the Act, and a request for waiver of Section 20.5(a) of the Commission's rules.

Petitioners request that the Commission deny the application, the petition for declaratory ruling and the waiver request on grounds that Telemetrix, its officers, directors and majority shareholders; Convey, its officers, directors and shareholders who are members or affiliates of the Becker family and Green Eagle, its officers, directors and shareholders who are members of the Becker family have engaged in deceit of and fraudulent conduct towards Tracy and TBC; Telemetrix's shareholders who are not members of the Becker family, and Telemetrix creditors, as more fully set forth below. The Commission has long applied the principle that persons who have engaged in fraud and deceit are not qualified to hold a license from the Commission and the instant case should be no exception to this well established principle..

PETITIONERS HAVE STANDING

Pursuant to Section 309(b) of the Act, Tracy has standing to object to the Convey - Green Eagle Networks application and Green Eagle's petition and waiver request because he is a stockholder owning about 2% of its issued and outstanding common stock and is a large creditor of Telemetrix holding approximately \$2.2 million in Telemetrix's unpaid promissory notes plus interest. TBC also has standing because it is a creditor of

Telemetrix holding an unpaid promissory note from Telemetrix for \$ 467,000 plus interest totaling about \$725,000.

Tracy has pending arbitration against Telemetrix before the American Arbitration Association (AAA) for breach of contract note to resolve Tracy's unpaid promissory notes plus accrued interest which currently total over Four Million Dollars (\$4,000,000). Tracy filed the arbitration the AAA in November, 2008 and the arbitration is in its early stages having recently been assigned to an arbitrator.

TBC has a lawsuit against Telemetrix pending in Scotts Bluff County, Nebraska (Case No. CI 07-37) for the collection of its unpaid promissory note for \$467,000 plus accrued interest which totals nearly \$800,000. TBC recently amended its complaint against Telemetrix to charge Telemetrix, its officers and directors; Green Eagle and Green Eagle Networks, its officers, directors and shareholders with conspiracy to commit fraud, and fraudulent transfer of its assets including the PCS licenses which are the subject of the Convey and Green Eagle Networks assignment application. A copy of TBC's amended complaint is attached as Exhibit B. Neither Telemetrix nor Green Eagle nor Green Eagle networks have answered TBC's amended complaint as of the date of this petition.

On August 20, 2009, TBC filed a petition for reorganization under Chapter 11 of the Federal Bankruptcy Code and U.S. Bankruptcy Court for the District Colorado, and will make application to the Bankruptcy Court to proceed with the litigation against Telemetrix and Green Eagle and Green Eagle Networks in case number CI 07 -37.

**THE APPLICATION FOR ASSIGNMENT OF PCS LICENSES AND THE
PETITION FOR DECLARATORY RULING AND WAIVER REQUEST SHOULD
BE DENIED.**

The application submitted by Convey and Green Eagle Networks is inconsistent with Telemetrix's disclosures made in its Form 8 filing with the SEC. In that filing, Telemetrix reported that it had sold certain of its assets to Green Eagle, and that it had sold the PCS Licenses held by Convey to Green Eagle. The application, however, seeks Commission approval of the assignment of the PCS licenses from Convey to Green Eagle Networks, thus raising serious and substantial questions about the candor of Telemetrix in its report to the SEC, and its disclosure of the exact roles of Green Eagle and Green Eagle Networks in the transaction. Therefore, before the Commission can act on the application, Telemetrix and Convey and Green Eagle Networks and Green Eagle must explain the discrepancy between Telemetrix's report to the SEC and the application.

More significantly, however, the transaction is designed to enable Telemetrix and Convey to avoid paying its non-Becker family creditors as well as injuring its non-Becker family shareholders by stripping the assets from Telemetrix and Convey, which are controlled by the Becker family and, transferring them to new corporations owned and controlled by the Becker family under an alleged foreclosure pursuant to a "security agreement" between Telemetrix and the Becker family. This "security agreement" has never been disclosed to the SEC, this Commission, Telemetrix's shareholders or creditors through a public report required be filed with the SEC nor to the federal Bankruptcy Court. The proposed transaction constitutes Telemetrix's fraudulent transfer of Telemetrix and Convey assets to Becker family controlled companies free and clear

of any liens or encumbrances so that any creditor suing and obtaining judgment against Telemetrix and/or Convey will have no assets from which to collect such judgment. As stated above, Telemetrix is a Delaware corporation. Under Delaware law, a transfer made or an obligation incurred by a debtor is fraudulent as to a present creditor whose claim arose before the transfer was made or the obligation was incurred if the transfer was made to an insider for an antecedent debt; the debtor was insolvent at the time and, the insider had reasonable cause to believe that the debtor was insolvent. Moreover, if a transfer made or an obligation incurred by a debtor is for a domestic creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred; if the debtor made the transfer or incurred the obligation (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equal in value in exchange for the transfer or obligation, and the debtor; (a). was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasoning small in relation to the business or transaction; or (b). intended to incur, or believed or recently should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due. In determining actual intent of the debtor to hinder, delay or defer any creditor of the debtor, consideration may be given, among other factors, to whether the transfer or obligation was to an insider, the transfer or obligation was disclosed or concealed, before the transfer is made or obligation was incurred the debtor had been sued or threatened with suit, the transfer was substantially of all the debtor's assets, and the debtor was insolvent. *6 Delaware Corporation Code sections 1304 and 1305.*

Convey is a Nebraska corporation. The fraudulent transfer law in Nebraska is

substantially the same. Generally, the question whether a fraudulent transfer has occurred is a question of fact. Telemetrix 's transfer of substantially all of its assets to Green Eagle and Convey's proposed assignment of its PCS licenses to Green Eagle Networks fits the fraudulent transfer laws of Delaware and Nebraska to a tee. Telemetrix transferred its assets, including the assets held by Convey valued at \$3.975 million, to Green Eagle in exchange for approximately the same amount of debt owed by Telemetrix to Green Eagle, thereby removing almost \$4 million from Telemetrix's books, according to the Form 8 Telemetrix filed with the SEC on July 2, 2009. Both Tracy and TBC and pending claims in the form of lawsuits pending against Telemetrix for almost \$4 million at the time the transfer. Moreover, the transfer is being made to Green Eagle, controlled by the Becker family, and whose shareholders are or are affiliates of Telemetrix's controlling shareholders, making the transfer to an insider for an antecedent debt. Telemetrix was insolvent at the time of the transfer, an absolute fact based on Telemetrix's bankruptcy petition and the fact that its financial position and has not changed since it voluntarily dismissed its bankruptcy petition, and the Becker family, who control Telemetrix not only had reasonable cause to believe, but knew, that Telemetrix was insolvent. The Commission must, therefore, consider the facts surrounding the transaction to determine whether Telemetrix and Convey, on the one hand, and Green Eagle and Green Eagle Networks, on the other hand, have engaged in fraud and are qualified to carry out the proposed assignment of Convey's PCS licenses.

Equally as significant and clearly disqualifying, Telemetrix has engaged in a continuous failure to report its activities on a timely and current basis as required by the SEC and this Commission. Telemetrix filed a petition for Chapter 11 bankruptcy in

December, 2008, and voluntarily dismissed the bankruptcy petition in March, 2009. Telemetrix, however, has yet to notify the SEC and the Telemetrix shareholders of the fact that the bankruptcy was voluntarily dismissed. Moreover, Telemetrix failed to file with the SEC any "security agreement" involving its assets. The SEC requires the filing of such agreements because they are "material" to the operation of Telemetrix. Likewise, in view of this Commission's previous ruling in 2006 of the foreign ownership in Telemetrix, it was incumbent upon the Company to file with this Commission any security agreement involving its assets which was made in favor of any entity with foreign ownership. As noted above, Telemetrix did not file the "security agreement" with Green Eagle with this Commission. Telemetrix failure to report its voluntary dismissal of his bankruptcy petition to the SEC, failure to file the Green Eagle "security agreement" with the SEC, and this Commission demonstrates that an intentional withholding of significant and material information affecting Telemetrix's business, its creditors and non-Becker family stockholders is an intentional misrepresentation, and shows a lack of candor in dealing with federal regulatory agencies.

The Commission must consider the foregoing failures to disclose material information to the SEC and this Commission together with Convey and Green Eagle Networks' failure to inform the Commission how Green Eagle Networks became the proposed assignee instead of Green Eagle as Telemetrix reported to the SEC in Form 8, and their failure to explain Telemetrix's "on going ability" to utilize the licenses being transferred in the application. These facts are material and relevant to the application. Convey and Green Eagle Networks have withheld this information from the assignment application. The Commission must know the identity of the entity who will be the actual

licensee of the PCS stations being assigned, and what will be the role of Telemetrix in the operation of the PCS stations and the telecommunications services that will be provided by these stations. Convey and Green Eagle Networks' lack of candor in failing to disclose all pertinent information all the parties involved in the transaction require the Commission to deny the Convey-Green Eagle Networks assignment application, and the Green Eagle petition and waiver request.

Furthermore, Green Eagle has gone to great lengths in its petition and waiver request to report that the percentage of foreign ownership in the licensee of the PCS stations sought to be assigned will remain at the same level after the assignment as it was before the assignment. While this may be true, Green Eagle fails to tell the Commission that Green Eagle's foreign ownership percentage effectively becomes 100% controlled by Becker interests because and the remaining 30% ownership of Green Eagle is held by a Becker insider, CEM & Associates, owned and controlled by a person who rents office space from Larry E. Becker of the Becker family and who has had a strong social, personal and business relationship with Larry E. Becker for a number of years, including that of a major creditor. Green Eagle's failure to disclose this important fact raises serious concerns whether Green Eagle has been candid with Commission in its petition and waiver request. The Commission must inquire into these matters before it can grant the assigned application, the petition and waiver request.

The Commission relies heavily on the honesty and probity of its licensees for a system that is a large self policing. *See Contemporary Media , Inc. v. FCC, 214 F. 3d 187, 193 (D.C. Cir. 2000)*. Otherwise, the regulatory system will break down and the valuable radio spectrum, a national resource, will be seriously misused. An applicant's

misrepresentation and lack of candor necessarily raise immediate concerns of this Commission as to whether a licensee will be truthful in dealing the Commission and other agencies that regulate it. The U.S. Supreme Court held long ago that the fact of concealment may be more significant than the facts concealed, and a willingness to dupe a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones. *FCC v. WOKO, Inc*, 329 U.S. 223, 227 (1946).

Telemetrix's history of failing to provide timely and accurate reports to the SEC and this Commission necessitate a denial of the application, and the declaratory ruling and waiver request

CONCLUSION

The Commission must deny the Convey-Green Eagle Networks assignment

Application , and Green Eagle's petition and waiver request for the reasons set forth above.

Dated: September 10, 2009

Respectfully submitted,


Michael J. Tracy

and


Tracy Broadcasting Corporation, Debtor-in-Possession

By:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of September, 2009, a true and complete copy of the foregoing **PETITION TO DENY APPLICATIONS OF CONVEY COMMUNICATIONS, INC. AND GREEN EAGLE NETWORKS INC. AND TO DENY, PETITION OF GREEN EAGLE COMMUNICATIONS, INC. FOR A DECLARATORY RULING UNDER SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED AND REQUEST FOR WAIVER OF THE COMMISSION'S RULES** was served upon the following persons via United States Mail:

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