

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	
)	
MOBILE UHF, INC.)	File No. D122643
)	
Request for Reinstatement of License)	
For Specialized Mobile Radio)	
Station WPCE768 at)	
Corona, California)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 11, 2000

Released: August 14, 2000

By the Chief, Commercial Wireless Division, Wireless Telecommunication Bureau:

I. Introduction

1. On April 17, 2000, James A. Kay, Jr. (Kay), a Specialized Mobile Radio (SMR) licensee in the Los Angeles, California area, filed a Petition for Reconsideration¹ of the March 17, 2000 action by the staff of the Wireless Telecommunications Bureau's Commercial Wireless Division (CWD staff) reinstating the above-captioned application. For the reasons discussed below, Kay's Petition for Reconsideration is denied.

II. Background

2. On October 19, 1998, CWD's staff cancelled Mobile UHF, Inc.'s (Mobile UHF) authorization for Station WPCE768. Pursuant to its actions in the "Goodman/Chan" proceeding, the Commission determined that conventional SMR licensees, such as Mobile UHF, that had not been accorded "similarly situated" status and had not constructed their stations within the eight-month construction period were not entitled to temporary waivers of the Commission's construction and operation rules.² On February 14, 2000, Mobile UHF filed the above-captioned application seeking reinstatement of the authorization for Station WPCE768. On March 17, 2000, CWD's staff, *sua sponte*, reinstated Mobile UHF's authorization. In its petition for reconsideration, Kay states that he is an SMR operator in direct competition with Mobile UHF and that CWD's action reinstating Mobile UHF's authorization has a direct

¹ Petition for Reconsideration filed April 17, 2000.

² See *Public Notice*, Commission Grants Goodman/Chan Receivership Licensees and Similarly Situated Non-Goodman/Chan General Category SMR Licensees a Temporary Waiver of Section 90.609(b) of the Commission's Rules, DA 98-1656 (rel. August 19, 1998). According to the *Public Notice*, "similarly situated" licensees are licensees who obtained their 800 MHz SMR General Category licenses through application preparation services, but did not hire one of the four companies that were the subject of the Goodman/Chan proceeding, and who were granted licenses with an eight-month construction period.

and adverse economic impact on him.³ Kay alleges that both Mobile UHF's application for reinstatement of the license for Station WPCE768 and CWD's action reinstating the authorization were grossly untimely.⁴ Finally, Kay claims that the Commission's action reinstating Mobile UHF's authorization for Station WPCE768 is inconsistent with its treatment of Kay's SMR authorizations, resulting in a pattern of unlawful discrimination against Kay.⁵

III. Discussion

3. Our records indicate that Mobile UHF provided the Commission with a notification of timely construction of its facilities for Station WPCE768 and that the station was constructed and placed in operation in compliance with Commission's rules. The Commission's staff thus erred when it cancelled the authorization for Station WPCE768. The Commission, upon learning of an inadvertent ministerial processing error, may correct its error, even beyond the reconsideration period.⁶ With regard to Kay's claim that the Commission's action reinstating Mobile UHF's applications demonstrates a pattern of unlawful discrimination against Kay, Kay has failed to specify how the Commission's action reinstating Mobile UHF's authorization violates the Commission's rules or unlawfully discriminates against Kay.⁷

IV. Ordering Clauses

4. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by James A. Kay, Jr. on April 17, 2000 in the above-captioned proceeding IS DENIED.

5. This action is taken pursuant to delegated authority as set forth in section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Federal Communications Commission

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

³ Petition at 1.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ See *Interstate Broadcasting Company, Inc.*, 2 FCC Rcd 4051 (1987); and *American Trucking Association v. Frisco Transportation Company*, 358 U.S. 13 (1958).

⁷ Therefore, we do not need to inquire whether Kay has standing to oppose the Bureau's staff action in this matter.

