

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

In the Matter of	)	
	)	
James A Kay, Jr.	)	File Nos. 628816
	)	633210
Applications for Modification	)	
Trunked SMR Station WNPJ874	)	
Mount Lukens, California	)	

**ORDER**

**Adopted: February 2, 2005**

**Released: February 2, 2005**

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

1. On October 29, 1993, Cal Western Termite Control Inc. (Cal Western) filed a petition to deny (Petition to Deny)<sup>1</sup> the above-captioned applications filed by James A. Kay, Jr. (Kay).<sup>2</sup> Cal Western supports its Petition to Deny by incorporating by reference the arguments presented in a Petition for Reconsideration filed on October 4, 1993,<sup>3</sup> and supplemented on October 29, 1993,<sup>4</sup> seeking reinstatement of its license for Station KVL499. The Wireless Telecommunication Bureau's Public Safety and Private Wireless Division (PSPWD) denied Cal Western's Petition for Reconsideration in an Order released on July 20, 2001,<sup>5</sup> and we agree with the legal conclusion in that Order rejecting Cal Western's sole allegation that its license was fraudulently cancelled.<sup>6</sup>

2. Cal Western's stated intent in its Petition to Deny is to prevent further loading on frequency 851.9625 MHz on Kay's Station WNPJ874 in the event PSPWD reinstated Cal Western's license for Station KVL499.<sup>7</sup> Not only did PSPWD deny Cal Western's reconsideration request and therefore its reinstatement request, Cal Western provides no legal or technical basis on which to deny either of Kay's applications other than the argument considered and rejected in the *PSPWD Order*. As a

<sup>1</sup> Opposition to Applications, Letter from Arthur B. Cook, Counsel for Cal Western Termite Control Inc. to Terry L. Fishel, Chief, Land Mobile Branch, Wireless Telecommunications Bureau (Oct. 29, 1993) (Petition to Deny).

<sup>2</sup> Kay filed an Opposition on November 9, 1993. Opposition to Petition to Deny, filed by James A. Kay, Jr. (Nov. 9, 1993).

<sup>3</sup> Letter from Marcus D. Canipe, Cal Western Termite & Pest Control, Inc., to FCC, Gettysburg, PA (received Oct. 4, 1993 (Petition for Reconsideration).

<sup>4</sup> Letter from Arthur B. Cook, Counsel for Cal Western Termite Control Inc. to Terry L. Fishel, Chief, Land Mobile Branch, Wireless Telecommunications Bureau (Oct. 29, 1993) (Motion for Acceptance of Late Filed Pleading and Supplement to Request for Reconsideration).

<sup>5</sup> In the Matter of License of Cal Western Termite & Pest Control, Inc. for Conventional Business Station KVL499, Modjeska and Mount Lukens, California, *Order on Reconsideration*, 16 FCC Rcd 14049 (PSPWD 2001) (*PSPWD Order*).

<sup>6</sup> *PSPWD Order*, 16 FCC Rcd at 14051, ¶ 6. PSPWD determined that there was insufficient evidence to conclude that the cancellation of Cal Western's license was procured by fraud on the Commission's processes, but that the issue of fraud solely involved interactions between Cal Western and another entity. *Id.*

<sup>7</sup> Opposition to Applications at 1.

result, we have no basis on which to consider Cal Western's Petition. We therefore deny Cal Western's Petition to Deny.

3. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by Cal Western Termite Control Inc., is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas  
Assistant Chief, Mobility Division  
Wireless Telecommunications Bureau