

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

In the Matter of)	
)	
CHARLES T. CRAWFORD)	File No. A060756
Licensee of Conventional Business Station)	
WPRL470, Santa Inez, California)	
)	
DENNIS ENYEART)	File No. A059522
Licensee of Conventional Business Station)	
WPRL897, Santa Inez, California)	
)	
RADIOWAVE COMMUNICATIONS)	File No. A060866
Licensee of Conventional Business Station)	
WPLV944, Santa Inez, California)	
)	
WILLIAM SORRENTINO)	File No. A060755
Licensee of Conventional Business Station)	
WPRL252, Santa Inez, California)	
)	
US MOBILE WIRELESS)	File No. A060916
Licensee of Conventional Business Station)	
WPRL260, Santa Inez, California)	

ORDER ON RECONSIDERATION

Adopted: May 22, 2006

Released: May 24, 2006

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we address a Petition for Limited Further Reconsideration (Petition) filed by James A. Kay, Jr. on June 23, 2003.¹ The Petition seeks reconsideration of an *Order*² of the former Public Safety and Private Wireless Division³ (PSPWD) denying Kay's informal request (Informal Request)⁴ for Commission action against the license of

¹ Petition for Limited Further Reconsideration (filed June 23, 2003) (Petition).

² See Charles T. Crawford, *Order*, 18 FCC Rcd 10475 (WTB PSPWD 2003) (*Order*).

³ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

⁴ See Informal Request filed by James A. Kay, Jr. (Nov. 4, 2002). By way of background, Kay has alleged throughout this proceeding that the above-captioned licenses do not comply with the Commission's co-channel distance separation requirements because they are allegedly located less than seventy miles from Kay's Station WNJA910. With the exception of the Radiowave secondary stations, existing co-channel sites licensed under the

(continued....)

Radiowave Communications (Radiowave) for Conventional Business Station WPLV944, Santa Inez, California.⁵ PSPWD, *inter alia*, denied Kay's Informal Request to set aside Radiowave's authorization to operate a secondary⁶ station located less than seventy miles from Kay's co-channel primary Station WNJA910, Oat Mountain, California. For the reasons stated below we deny the Petition.

2. *Background.* The Commission's short-spacing rules generally require co-channel stations to be separated by seventy miles unless the relevant parties agree to a shorter distance and specify interference protections in the short-spaced environment.⁷ The Commission's policies provide that a secondary station may be forced to terminate operations should a co-channel licensee within seventy miles of the secondary station experience interference.⁸ More recently, the Commission elaborated that the Commission's previous statements

did not state or imply that a secondary station must terminate operations without exception when a co-channel licensee locates within 70 miles. Rather, we may require a secondary station to terminate operations should a co-channel licensee locate a primary site within seventy miles of the secondary station, and the secondary station causes interference to the primary station.⁹

3. In his Informal Request, Kay argued that Radiowave's secondary station should be set aside because it violates the Commission's short-spacing rules. PSPWD rejected this argument, in large part because the Radiowave authorization was granted on the condition that it not cause interference to, and must accept interference from, Kay's primary Station WNJA910.¹⁰ PSPWD distinguished the circumstances presented in Kay's Informal Request from those in presented in *Rayfield Communications, Inc.*,¹¹ on the grounds that "the record [in *Rayfield*] reflected evidence of interference."¹² PSPWD concluded that, under the circumstances, initiating modification proceedings against the Radiowave secondary station would unduly disrupt the authorized operations, and would not serve the public interest.¹³

(...continued from previous page)

above-captioned licenses are located more than seventy miles from Station WNJA910. *See Order*, 18 FCC Rcd at 10477-78 ¶ 7.

⁵ On October 1, 2001, Radiowave assigned the license for Station WPLV944 to Nextel of California, Inc. *See FCC File No.* 0000537411.

⁶ Secondary operations may not cause interference to primary operations and must accept interference from such operations. *See* 47 C.F.R. § 90.7.

⁷ 47 C.F.R. §§ 90.621(b)(4), 90.621(b)(5).

⁸ *See, e.g.*, Roger Dickinson d/b/a Portable Walkie Talkies to Go, *Memorandum Opinion and Order*, 15 FCC Rcd 4845, 4850 ¶ 15 (2000).

⁹ *See* Thomas K. Kurian, Renewal and Modification of 800 MHz Station WNXN838, *Memorandum Opinion and Order*, 19 FCC Rcd 10056, 10058 ¶ 7 (2004) (emphasis omitted) (*Kurian MO&O*) affirming Thomas K. Kurian, Renewal and Modification of 800 MHz Station WNXN838, *Memorandum Opinion and Order and Proposed Order of Modification*, 18 FCC Rcd 4576 (WTB CWD 2003) (*Kurian Order*).

¹⁰ *See Order*, 18 FCC Rcd at 10478 ¶ 7.

¹¹ *Rayfield Communications, Inc.*, *Memorandum Opinion and Order*, 16 FCC Rcd 19513 (WTB PSPWD 2001) (*Rayfield*).

¹² *Order*, 18 FCC Rcd at 10478 ¶ 7.

¹³ *See id.*

4. Kay seeks reconsideration of the decision not to initiate license modification proceedings.¹⁴ Kay argues that the *Order* mischaracterized the *Rayfield* decision, which the Informal Request cited, as involving actual (rather than potential) interference, and on that basis erroneously distinguished *Rayfield* from the present matter.¹⁵ He also contends that the *Order*'s failure to follow the precedent cited in the Informal Request reflects an improper agency bias against him.¹⁶

5. *Discussion.* We deny Kay's request for limited reconsideration, for it is based on a misinterpretation of the *Order*. Contrary to Kay's assertion, PSPWD did not distinguish *Rayfield* on the grounds that Kay had demonstrated only potential interference while the record in *Rayfield* included evidence of actual interference.¹⁷ Kay is correct that the complaint in *Rayfield*, like his Informal Complaint, asserted that the short-spaced license should be modified because it posed the potential for interference. The distinction between this case and the precedent cited by Kay is that Radiowave is licensed on a secondary basis, while the short-spaced stations in the cases on which Kay relies were licensed on a primary basis. It can be assumed that short-spaced co-primary stations will cause each other actual interference, but such a presumption is not reasonable when the short-spaced station is licensed on a secondary basis. As PSPWD noted, secondary operations may not cause interference to primary operations and must accept interference from such operations. Thus, the *Order* reasonably distinguished the precedent cited in the Informal Request from the circumstances presented in this matter.

6. Further, precedent shows that the Commission has broad discretion in exercising its license modification authority with regard to short-spaced secondary operations. While the secondary Radiowave station is short-spaced with Kay's primary co-channel operations, such a circumstance by itself does not necessarily require that we set aside the grant of the license for the secondary, short-spaced station. Indeed, elsewhere it has been held that the grant of a secondary station that had been short-spaced was permissible without consent from a co-channel licensee.¹⁸

7. The short-spaced Radiowave station, licensed on a secondary basis, is under the obligation to not cause interference to primary operations and to accept interference from such operations. To provide additional assurances, pursuant to Kay's request earlier in this proceeding, PSPWD clearly stated that the Radiowave station may not cause interference to the primary operations.¹⁹ Accordingly, Kay has already effectively secured the relief that he has sought throughout this proceeding: protection from interference. Given that Kay also is under no obligation to afford Radiowave's secondary station any interference protection, PSPWD concluded that Radiowave's secondary station would not inhibit Kay's primary operations, and that Kay had not provided sufficient justification to require the disruption

¹⁴ Petition at 2.

¹⁵ *Id.* Kay also states that PSPWD "conveniently ignored" another case cited in the Informal Request, California Metro Mobile Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 112 (WTB 2001) (modifying license because it was improperly short-spaced to a station with exclusive use of the frequency), which also involved a license modification due to potential interference. Petition at 2-3.

¹⁶ Petition at 3-4.

¹⁷ Kay contends that the *Order* "essentially maintains that [PSPWD] may modify an existing license only on a showing of actual interference, and presumably denies Kay's request because it only alleges potential interference." *Id.* at 2.

¹⁸ See *Kurian Order*, 18 FCC Rcd at 4578 ¶¶ 5, 9, *aff'd*, *Kurian MO&O*, 19 FCC Rcd at 10058 ¶ 7; see also RF Pocketcomm, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 18456, 18458 ¶ 8 (WTB PSPWD 2003) (modifying a short-spaced primary station to secondary status, where the already-licensed station did not otherwise comply with the Commission's short-spacing rules).

¹⁹ See *Order*, 18 FCC Rcd at 10478 ¶ 7 (citing Charles T. Crawford, 17 FCC Rcd 2014, 2015 n.7 (2002)).

of Radiowave's operations or for the Commission to bear the administrative burden associated with commencing license modification proceedings. Under these circumstances, we find no bias in the *Order's* decision not to set aside the subject secondary operations.²⁰

8. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Limited Further Reconsideration filed by James A. Kay, Jr., on June 23, 2003, IS DENIED.

9. This action is taken under delegated authority pursuant to Sections 0.131, 0.331, and 1.106(b)(3) of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.106(b)(3).

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁰ In decisions released after Kay filed the Petition, the Commission specifically rejected Kay's claims of agency bias against him. See James A. Kay, Jr., *Order*, 20 FCC Rcd 12228, 12229 ¶ 3 (2005); James A. Kay, Jr., *Order*, 18 FCC Rcd 26468, 26472-73 ¶ 10 (2003).