

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

In the Matter of	)	
	)	
JAMES A. KAY, JR.	)	
	)	
Application for Modification of the License for the Industrial/Business Pool, Commercial Trunked (YK) Station KJV843 in Los Angeles, California;	)	File No. 0001419150
	)	
Application for a New License for an Industrial/Business Pool, Commercial Trunked (YK) Station in Los Angeles, California	)	File No. 0001420784
	)	

**ORDER**

**Adopted: October 17, 2006**

**Released: October 17, 2006**

By the Assistant Chief, Mobility Division:

1. This Order dismisses as moot the petition that James A. Kay, Jr. filed on April 6, 2004, seeking reconsideration of the dismissal of the above-captioned applications (Petition).<sup>1</sup> Kay filed the applications in August 2003, seeking authority under File No. 0001419150 to add certain frequencies in the 470-512 MHz band to existing sites on his license for Station KJV843 located in the Los Angeles, California area;<sup>2</sup> and authority under File No. 0001420784 to construct a new station that would operate on the same frequencies and also be located in the Los Angeles area.<sup>3</sup> On March 15, 2004, the Mobility Division dismissed the applications as defective because at that time, if granted, station operations would cause unlawful co-channel interference with authorized operations from Station WPSI886.<sup>4</sup>

2. Station WPSI886 has been the subject of ongoing litigation since 2001, in a separate proceeding before the former Public Safety and Critical Infrastructure Division. On October 4, 2006, the Wireless Telecommunications Bureau (Bureau) released an *Order on Further Reconsideration* in that proceeding, deleting all frequency pairs from Station WPSI886 that conflicted with Kay’s applications in

<sup>1</sup> Petition for Reconsideration, filed by James A. Kay, Jr. (Apr. 6, 2004).

<sup>2</sup> FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC 601 Main Form, *ULS Application*, File No. 0001419150 (filed by James A. Kay, Jr.) (Modification Application, Station KJV843). The frequency pairs proposed in the application include 471/474.7250, 471/474.8500, 471/474.8750, 472/475.2000, 472/475.2250, 471/474.6500, 471/474.7375, 471/474.8625, and 471/474.9000.

<sup>3</sup> FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC 601 Main Form, *ULS Application*, File No. 0001420784 (filed by James A. Kay, Jr.) (Application for a New License). The frequency pairs proposed in the application include 471/474.7250, 471/474.8750, 472/475.2000, 471/474.7375, 471/474.8625, and 471/474.9000.

<sup>4</sup> Notice of Dismissal, Reference No. 2624354, File No. 0001419150 (Mar. 15, 2004); Notice of Dismissal, Reference No. 2624355, File No. 0001420784 (Mar. 15, 2004) (both explaining that “The application is deemed defective in that it does not meet the frequency coordination requirements. The application does not properly consider the existence of WPSI886 which is exclusive on the frequencies requested within 40 km”).

this proceeding.<sup>5</sup> As a result of the October 4, 2006 decision, we returned Kay's applications to pending status on October 11, 2006. After reviewing both applications, we granted Kay's application for a new license, File No. 0001420784, on October 12, 2006, and stand ready to grant Kay's modification application once Kay submits a necessary amendment to that application.

3. Specifically, after the Division dismissed Kay's modification application, File No. 0001419050, Kay assigned several licenses, including the license for Station KJV843, to Comm Enterprises, LLC,<sup>6</sup> an entity of which Kay is the principal. Station KJV843 is therefore currently authorized under Comm Enterprises, LLC and its FCC Registration Number (FRN) 0013075411. The modification application, however, is pending under the name of "James A. Kay, Jr." and his FRN 0001888940. To enable processing in the Commission's Universal Licensing System (ULS), Kay must submit an amendment to his application File No. 0001419150 through ULS attaching a certification that the licensee name and FRN may be changed to those now associated with Station KJV843. Once Kay files the attachment, we can grant his modification application for the license for Station KJV843.

4. Finally, Kay argues in his Petition that the license for Station WPSI886 should not have been granted. As stated above, the Bureau's *Order on Further Reconsideration* effectively reversed the grant of the authorization for Station WPSI886 as relevant to Kay's applications. We therefore dismiss Kay's Petition as moot.

5. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106(b) of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106(b), the Petition for Reconsideration filed by James A. Kay, Jr. on April 6, 2004, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas  
Assistant Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>5</sup> In the Matter of Samuel Moses, *Order on Reconsideration*, DA 06-1983 at ¶16 (WTB rel. Oct. 4, 2006). The frequency pairs deleted from the license for Station WPSI886 that are relevant to this proceeding include 471/474.7250, 471/474.8500, 471/474.8750, 472/475.2000, 472/475.2250.

<sup>6</sup> FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control, FCC 603 Main Form, *ULS Application*, File No. 0002089379 (filed by James A. Kay, Jr.). The assignment was consented to on March 25, 2005, *Public Notice*, Report No. 2112 (Mar. 30, 2005), and consummated on April 25, 2005, *Public Notice*, Report No. 2143 (May 4, 2005).