

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

In the Matter of

SAMUEL MOSES PR	)	
Application to Operate an Industrial/Business	)	File Nos. 0000415681, 0000423812
Station in the Private Land Mobile Radio Services	)	
(YG) in Montrose, California	)	
	)	
Application for Assignment of Industrial/Business	)	File No. 0002100058
Station WPSI886 in the Private Land Mobile	)	
Radio Services (YG) in Montrose, California	)	
	)	
KEVIN R. NIDA	)	
Applications for Assignment of	)	File Nos. 0002134475, 0002134486
Industrial/Business Stations WPSI886 and	)	
WQAK850 in the Private Land Mobile Radio	)	
Services (YG) in Montrose, California	)	
	)	
Application for Special Temporary Authority to	)	File No. 0002799178
Operate an Industrial/Business Station in the	)	
Private Land Mobile Radio Services (YG) in	)	
Montrose, California	)	
	)	
JAMES A. KAY, JR.	)	
Application for Modification of the License for	)	File No. 0001419150
Industrial/Business Pool, Commercial Trunked	)	
(YK) Station KJV843 in Los Angeles, California	)	
	)	
Application for a New License for an	)	File No. 0001420784
Industrial/Business Pool, Commercial Trunked	)	
(YK) Station in Los Angeles, California	)	

**ORDER ON PARTIAL RECONSIDERATION**

**Adopted: June 29, 2010**

**Released: June 30, 2010**

By the Chief, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order on Partial Reconsideration* affirms the dismissal of a procedurally defective petition for reconsideration. We have before us a petition filed by James A. Kay, Jr. (Kay), and Comm Enterprises, LLC (Comm Enterprises) (collectively, Petitioners),<sup>1</sup> seeking partial reconsideration of the *Second Order on Further Reconsideration (Second Order)*<sup>2</sup> in this proceeding. The *Second Order* dismissed a petition for reconsideration filed by Petitioners because it relied on information that could have been presented earlier in the proceeding. For the reasons below, we deny the instant petition.

<sup>1</sup> Petition for Limited Reconsideration, filed by Kay and Comm Enterprises (July 29, 2009) (2009 Petition).

<sup>2</sup> Samuel Moses PR, *Second Order on Further Reconsideration*, 24 FCC Rcd 8857 (WTB 2009) (*Second Order*).

2. *Background.*<sup>3</sup> The Wireless Telecommunications Bureau (Bureau) granted Samuel Moses a license for private land mobile radio Station WPSI886, Montrose, California, on ten 12.5 kHz “offset” channels in the 470-512 MHz band.<sup>4</sup> Kay filed a petition for reconsideration, and a request that the license be modified, arguing that the station would cause interference to fifteen stations licensed to him.<sup>5</sup> In 2006, the Bureau concluded that nine of the frequency pairs assigned to Station WPSI886 were improperly coordinated and should not have been granted, but that frequency pair 472/475.2750 MHz met the relevant interference protection requirements with respect to the specified Kay stations.<sup>6</sup> Consequently, the Bureau terminated the authorization for nine channels, but permitted Station WPSI886 to continue operating on frequency pair 472/475.2750 MHz.

3. Petitioners sought partial reconsideration, arguing that the authorization for frequency pair 472/475.2750 MHz also should be terminated because “the Bureau neglected to consider” that operations on that channel did not meet the relevant interference protection requirements with respect to Comm Enterprises’s Station WIJ316.<sup>7</sup> Petitioners noted that Station WIJ316 operates on frequency pair 472/475.2875 MHz at locations where the Bureau had found that Station WPSI886 did not satisfy the relevant interference protection requirements with respect to the earlier-identified Kay stations.<sup>8</sup> In 2009, the Bureau dismissed Petitioners’ petition for partial reconsideration, because Kay had not identified Station WIJ316 in his prior pleadings, and Section 1.106(c) of the Commission’s Rules<sup>9</sup> generally prohibits the presentation of new information in a petition for reconsideration.<sup>10</sup>

4. *Discussion.* Section 1.106(c) provides that a petition for reconsideration that relies on facts not previously presented may be granted only if (i) the facts relate to events that occurred or circumstances that changed after the last opportunity to present such matters; (ii) the facts were unknown to petitioner until after the last opportunity to present such matters, and petitioner could not have learned of them sooner through the exercise of ordinary diligence; or (iii) consideration of the facts is required in the public interest.<sup>11</sup>

5. Petitioners argue that their invocation at this stage of the proceeding of the interference

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<sup>3</sup> This proceeding has a lengthy history, most of which is not germane to the instant petition. For more detailed information regarding the background of this matter, see *id.* at 8859-63 ¶¶ 4-15.

<sup>4</sup> See FCC File No. 0000415681 (filed Mar. 27, 2001, granted May 14, 2001). In 2005, the Bureau erroneously granted Moses an additional license under Call Sign WQAK850 for the same frequencies and location. See *Second Order*, 24 FCC Rcd at 8861 ¶ 11.

<sup>5</sup> Specifically, Stations KJV843, WIH681, WII755, WII905, WIJ533, WIK208, WIK310, WIK332, WIK611, WIK613, WIK983, WIL469, WIL653, WIL697, and WIL733. See Petition for Reconsideration, filed by Kay (Jan. 16, 2004); Petition for License Modification, filed by Kay (Jan. 14, 2004).

<sup>6</sup> See Samuel Moses, *Order on Further Reconsideration*, 21 FCC Rcd 11257, 11262-63 ¶¶ 15-16 (WTB 2006), *rev’g Order on Further Reconsideration*, 19 FCC Rcd 1 (WTB PSCID 2004), *rev’g Order on Reconsideration*, 17 FCC Rcd 17137 (WTB PSPWD 2002).

<sup>7</sup> See Petition for Partial Reconsideration, filed by Kay and Comm Enterprises, at 2 (Nov. 3, 2006) (2006 Petition). Petitioners made a similar argument with respect to Station WII874. See *id.* at 3 n.3. Kay had assigned the licenses for these stations to Comm Enterprises in 2005. See FCC File Nos. 0002089580 (filed Mar. 17, 2005, consented Mar. 25, 2005) (WII874), 0002089613 (filed Mar. 24, 2005, consented Apr. 27, 2005) (WIJ316).

<sup>8</sup> See 2006 Petition at 3.

<sup>9</sup> 47 C.F.R. §1.106(c).

<sup>10</sup> See *Second Order*, 24 FCC Rcd at 8868 ¶ 29. The Bureau also concluded that the petition was defective because it was not accompanied by an affidavit of a qualified electrical engineer, as required by Section 1.106(e) of the Commission’s Rules, 47 C.F.R. § 1.106(e). See *Second Order*, 24 FCC Rcd at 8868 ¶ 29.

<sup>11</sup> 47 C.F.R. §1.106(c)(1), (2).

potential to Station WIJ316 does not constitute a “fact not previously submitted to the Commission,” on the ground that Station WIJ316 is entitled to the same technical parameters of protection as those accorded to operations at the same location (but on different frequencies) and set out in Kay’s initial request for modification.<sup>12</sup> We disagree. When Kay challenged the grant of Moses’ license, he failed to present any evidence that a station existed that would warrant protection at the relevant frequencies, thus omitting a key fact upon which his challenge to Moses’ operations on those frequencies depended. Nor are we convinced by Petitioners’ suggestion that new facts such as an additional call sign may be added to the record on reconsideration if they constitute “variation, amplification, or clarification” of previous arguments.<sup>13</sup> They cite no authority for this interpretation, and we find it unpersuasive.<sup>14</sup> The bottom line is that the locations and frequencies of Station WIJ316 were known to Kay when this proceeding began, but Kay did not cite its existence as a basis for denying Moses’s application to operate at the requested location on frequency pair 472/475.2750 MHz. In neither the petition for partial reconsideration nor the instant petition did Petitioners offer any explanation for not presenting the information earlier. Bureau staff was under no obligation to investigate whether Kay overlooked any of his licenses in his earlier petitions.<sup>15</sup> Consequently, the fact that the 2006 decision did not consider Station WIJ316 was not an error, and the 2009 decision affirming that action was correct.

6. Petitioners also argue that consideration of Station WIJ316 is required in the public interest in order to protect the integrity of the Commission’s licensing processes and assure adequate interference protection.<sup>16</sup> We conclude, however, that adherence to the principle of administrative finality in licensing matters furthers the public interest more than reconsidering this particular licensing decision based on information that Petitioners neglected to provide to the Commission in the first instance.<sup>17</sup>

7. *Conclusion.* We conclude that the Petitioners’ petition for partial reconsideration was properly dismissed pursuant to Section 1.106(c).<sup>18</sup> We therefore deny the instant petition for reconsideration.

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), 303(r), and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(r), 405(a), and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the Petition for Limited Reconsideration filed by James A. Kay, Jr., and Comm Enterprises, LLC, on July 29, 2009, IS DENIED.

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<sup>12</sup> 2009 Petition at 4-6.

<sup>13</sup> See 2009 Petition at 5.

<sup>14</sup> See Carolyn Hagedorn, *Memorandum Opinion and Order*, 11 FCC Rcd 1695, 1696 ¶ 11 (1996) (staff did not err in refusing to consider new facts in applicant’s petition for reconsideration, even where facts arguably were an “expansion” of matters raised in initial application).

<sup>15</sup> Cf. David R. Williams d/b/a Industrial Communications, Inc., *Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 264, 265 ¶ 11 (CCB 1991).

<sup>16</sup> See 2009 Petition at 6.

<sup>17</sup> See, e.g., Lois Hubbard, *Order on Reconsideration*, 24 FCC Rcd 8080, 8086 ¶ 15 (WTB BD 2009) (“We find that the public interest in requiring parties to timely participate in licensing proceedings outweighs Sprint Nextel’s private interests in being able to operate without consideration of Hubbard’s license.”); Hamshire Fannett High School, *Order on Reconsideration*, 24 FCC Rcd 8068, 8072-73 ¶ 8 (WTB BD 2009) (citing Crystal Broadcast Partners, *Memorandum Opinion and Order*, 11 FCC Rcd 4680, 4680 ¶ 6 (1996)).

<sup>18</sup> Consequently, we need not address Petitioners’ arguments regarding Section 1.106(e).

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

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman  
Chief, Wireless Telecommunications Bureau