

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

In the Matter of)	
)	
A-1-A Repeater Company)	File No. D034699
)	
For consent to the assignment of the)	
authorization and for modification of the)	
authorization for Conventional SMR (GX))	
Station WPAH737 from Harry A.)	
Thompson d/b/a 1 st Mobile)	
Communications to A-1-A Repeater)	
Company)	
)	
Harry A. Thompson d/b/a 1 st Mobile)	File No. D092490
Communications)	
)	
For reinstatement and renewal of the)	
expired authorization for Conventional)	
SMR (GX) Station WPAH737)	
Frequency 851.4125 MHz)	
Santa Paula, CA)	

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2001

Released: May 1, 2001

By the Commission:

1. The Commission has before it an Application for Review, filed December 20, 1999, by James A. Kay (Kay).¹ Kay seeks review of a November 18, 1999 decision by the Licensing and Technical Analysis Branch (Licensing Branch), Commercial Wireless Division, Wireless Telecommunications Bureau.² In this Order, we grant Kay's Application for Review.

2. In 1992, the Commission granted an SMR license for General Category (GX) Channel 851.4125 MHz, Station WPAH737, to Harry A. Thompson d/b/a/ 1st Mobile Communications (Thompson). At the time of licensing, the Commission's rules required a GX licensee to load its station

¹ Application for Review filed by James A. Kay on December 20, 1999 (Application for Review).

² See Letter from Terry Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau to Robert J. Keller, Esq., Harry A. Thompson d/b/a 1st Mobile Communications, and Robyn G. Nietert, Esq., dated November 18, 1999 (Licensing Branch Letter).

with 70 mobile units within eight months of receipt of its authorization in order to maintain exclusive use of the channel.³ Thompson did not have any end-users licensed to its channel, nor did it modify its license to add mobiles to its station. Therefore, the channel was subject to sharing and loading by other licensees. Subsequently, James Kay, the co-channel licensee, loaded Channel 851.4125 MHz with 70 mobile units and obtained exclusive rights to use of the channel in the same geographic area.⁴

3. In 1997, Thompson filed a modification application to add 72 mobiles to the license, and simultaneously applied to assign its license to A-1-A Repeater Company (A-1-A). Kay filed a petition to deny both Thompson's request to add mobiles and the assignment application. Kay also filed a Petition for Declaratory Ruling requesting that the Licensing Branch declare that Thompson's license had automatically cancelled for discontinuance of operations because the Commission's records showed no mobiles associated with the license.

4. On November 18, 1999, the Licensing Branch denied Kay's request for declaratory ruling, and consented to the assignment of the license from Thompson to A-1-A.⁵ The Licensing Branch concluded that although there were no mobiles listed as associated with the station, it could be considered "operational" by providing service to mobiles that used the channel as roamers.⁶ However, the Licensing Branch denied Thompson's request to add mobile units to the license because to do so required Kay's concurrence as co-channel licensee, and no such concurrence was provided.⁷ Kay seeks review of the Licensing Branch's decision except for the portion of the decision that denied Thompson's request to add mobiles.

5. In its Application for Review, Kay argues 1) that the license for Station WPAH737 automatically cancelled for discontinuance of operations because no mobile units were associated with the license in the Commission's records; 2) that the Licensing Branch erred in holding that the station could be considered operational by providing service to roamers;⁸ and 3) that the Licensing Branch could not grant an assignment of the station's authorization because the license had automatically cancelled.

6. We reverse the Licensing Branch's decision and grant Kay's Application for Review. Under the applicable rules, an 800 MHz General Category system that is non-operational for more than a year is deemed to have permanently discontinued operations, which results in automatic cancellation of the license.⁹ Moreover, in order to be considered "operational," the system must have at least one associated

³ 47 C.F.R. § 90.633(d).

⁴ On June 2, 1993, Kay was granted an authorization to operate Station WPAZ639, Oat Mountain, Northridge, CA, Channel 851.4125 MHz with 72 mobiles. Kay constructed the station and loaded it with 72 mobiles. See Kay Application for Review at 4.

⁵ 47 C.F.R. § 90.157.

⁶ Application for Review at 7-8.

⁷ The Licensing Branch denied the modification because the application did not contain either a frequency coordination statement or a co-channel concurrence statement from Kay, the co-channel licensee, as required by 47 C.F.R. § 90.621(b)(4).

⁸ Application for Review at 7-8.

⁹ 47 CFR § 90.157.

mobile operating on the channel.¹⁰ In this case, Thompson never obtained an authorization for mobiles as required by section 90.135(a)(5).¹¹ Subsequently, Kay obtained exclusive rights to the channel by loading it with 70 mobiles. This precluded Thompson from any further operation on the channel, regardless of whether such operation was by mobiles listed as associated with the station or by roamers.¹² Because Thompson was required to permanently discontinue its operations, we conclude that its authorization automatically cancelled. The result in this case is consistent with that of *Abraham Communications, Inc.*,¹³ in which we upheld the cancellation of a conventional SMR license for non-operation because the licensee failed to license any of the end users on its system and a subsequent licensee fully loaded the channel. The same reasoning applies here.

7. With respect to the Licensing Branch's grant of the application for consent to the assignment of authorization, there was no authorization for Thompson to assign to A-1-A because the license had automatically cancelled. Therefore, we set aside the Licensing Branch's consent to the assignment of authorization for SMR Station WPAH737.

8. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by James Kay in the above-captioned proceeding IS GRANTED.

9. IT IS FURTHER ORDERED that the Licensing Branch's consent to the assignment of authorization from Harry A. Thompson d/b/a/ 1st Mobile Communications to A-1-A Repeater Company for SMR Station WPAH737 IS SET ASIDE.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹⁰ 47 CFR § 90.633(d).

¹¹ 47 CFR § 90.135(a)(5).

¹² Because Thompson was precluded from all operations by Kay's loading of the channel, we do not reach the issue of whether Thompson's station could otherwise have been considered "operational" under Section 90.633(d) based solely on the provision of service to roamers.

¹³ *Abraham Communications, Inc., Memorandum Opinion and Order*, FCC 96-324 (rel. Sept. 18, 1996).