

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

In the Matter of)	
)	
Mobile UHF, Inc.)	File No. D122643
)	
Request for Reinstatement of License for)	
Specialized Mobile Radio Station WPCE768 at)	
Corona, California)	

MEMORANDUM OPINION AND ORDER

Adopted: December 14, 2001

Released: December 19, 2001

By the Commission:

I. Introduction

1. The Commission has before it an Application for Review, filed on September 13, 2000 by James A. Kay, Jr. (“Kay”). Kay seeks review of a *Memorandum Opinion and Order*¹ issued by the Commercial Wireless Division (“Division”), Wireless Telecommunications Bureau (“Bureau”), upholding the March 17, 2000 action by Division staff reinstating the authorization of Mobile UHF, Inc. (“Mobile UHF”) for Specialized Mobile Radio (“SMR”) Station WPCE768 at Corona, California.² Mobile UHF filed an Opposition on September 29, 2000. For the reasons discussed below, we deny Kay’s Application for Review.

II. Background

2. This matter arises from the cancellation and subsequent reinstatement of Mobile UHF’s authorization by the Division staff. On October 19, 1998, the staff cancelled Mobile UHF’s authorization on the grounds that Mobile UHF had failed to construct and commence operations within the eight-month period construction period associated with its license. The Division erroneously believed that Mobile UHF was one of a group of SMR licensees that had sought and been denied construction extensions in connection with the “Goodman/Chan” proceeding,³ and was therefore subject to cancellation. Upon learning that its license had been cancelled, Mobile UHF informed the Commission that it had not sought an extension, and provided evidence that the station had been timely constructed and placed in operation within the original eight-month construction period. Recognizing the error, Division staff reinstated Mobile UHF’s license on March 17, 2000.

¹ In re Application of Mobile UHF, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 15,007 (CWD 2000).

² The subject call sign was assigned from Mobile UHF, Inc. to MWS Communications LLC, consummated April 2, 2001.

³ See Daniel R. Goodman, Receiver; Dr. Robert Chan; Petitions for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, Request for Waiver of Section 90.633(c) of the Commission’s Rules by Various 800 MHz SMR Licensees, Request for Waiver of Section 90.609(b) of the Commission’s Rules Prohibiting the Transfer and Assignment of Unconstructed Licenses, Request for Extension of License Term of 800 MHz SMR Licensees, *Memorandum Opinion and Order*, 13 FCC Rcd 21944 (1998).

3. On April 17, 2000, Kay filed a Petition for Reconsideration of the staff's decision to reinstate Mobile UHF's authorization. Mobile UHF filed an Opposition to Kay's Petition on May 2, 2000. In a *Memorandum Opinion and Order* released August 14, 2000, the Division upheld the reinstatement of Mobile UHF's license and denied Kay's Petition.⁴ On September 13, 2000, Kay filed the subject Application for Review.

4. In his Application for Review, Kay states that he is an SMR operator in direct competition with Mobile UHF and that the reinstatement of Mobile UHF's authorization has a direct and adverse economic impact on him.⁵ Kay argues that Mobile UHF's request for reinstatement of the license and the Division's action reinstating the license were untimely.⁶ Kay also argues that the reinstatement of Mobile UHF's authorization for Station WPCE768 is inconsistent with the Bureau's treatment of Kay's SMR authorizations, demonstrating a pattern of unlawful discrimination against Kay.⁷

III. Discussion

5. Kay presents no new arguments in his Application for Review, and we see nothing in the record that would lead us to change the Division's decision to reinstate Mobile UHF's license. The record indicates that Mobile UHF provided the Commission with a notification of timely construction of its facilities for Station WPCE768 and that the station was constructed and placed in operation in compliance with Commission's rules. The Division staff thus erred when it cancelled the authorization for Station WPCE768. The Commission, upon learning of an inadvertent ministerial processing error, may correct its error, even beyond the reconsideration period.⁸

6. Furthermore, Kay has failed to demonstrate that the reinstatement of Mobile UHF's authorization, or any prior action of the Bureau, violates the Commission's rules or unlawfully discriminates against Kay. In his Application for Review, Kay asks us to review previous Bureau actions adverse to Kay, including: the dismissal as untimely of Kay's reconsideration petition in *S&L Teen Hospital Shuttle*;⁹ the Bureau's grant of a renewal application to the City of Commerce, a party adverse to Kay;¹⁰ and two 1994 letter decisions by the Bureau's Licensing Division in Gettysburg that set aside the grant of certain applications by Kay.¹¹ We find that none of these cases suggest a pattern of

⁴ *Supra*, note 1.

⁵ Application for Review at 2.

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ *See Interstate Broadcasting Company, Inc.*, 2 FCC Rcd 4051 (ASD 1987); and *American Trucking Association v. Frisco Transportation Company*, 358 U.S. 13 (1958).

⁹ In re S&L Teen Hospital Shuttle, Application to Modify and Reinstate the License for Business Radio Service Station WIJ767, Montrose, California, *Order*, 15 FCC Rcd 3055 (PSPWD 2000) (dismissing Kay's Petition for Reconsideration as untimely).

¹⁰ In re Applications of City of Commerce for Authorization and Renewal of the Authorization for Government Conventional Other Industrial/Land Transportation WPCE379 at Pasadena, California, File Nos. 624411 and R295496. On May 4, 1998, Kay filed a Petition for Reconsideration of a decision by the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division to grant a renewal application filed by the City of Commerce for Private Land Mobile Radio Station WPCE379, Pasadena, California. Kay also filed an Application for Review on January 27, 2000.

¹¹ Letter from W. Riley Hollingsworth, Deputy Chief, Licensing Division, to John A. Prendergast and Dennis C. Brown, Counsel for James A. Kay, Jr. and Browning Ferris (September 16, 1994) (setting aside erroneous grant of Kay's application to add frequency 853.7375 MHz to Station WNMY402); Letter from W. Riley Hollingsworth, (continued....)

discrimination against Kay. Subsequent to the release of *S&L Teen Hospital Shuttle*, Kay's Petition for Reconsideration was reinstated and denied on the merits.¹² Kay's Petition for Reconsideration of *City of Commerce* was granted.¹³ The 1994 licensing actions were routine decisions that were consistent with Commission precedent. We agree with the Division's conclusion that Kay has failed to substantiate his claims of discrimination, and we affirm its decision to reinstate Mobile UHF's license.

IV. Ordering Clause

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, the Application for Review filed by James A. Kay, Jr. on September 13, 2000 in the above-captioned proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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Deputy Chief, Licensing Division, to James A. Kay, Jr. (setting aside erroneous grant of renewal applications for Stations WNQK532, WIJ992, and WIJ893).

¹² In re *S&L Teen Hospital Shuttle*, *Memorandum Opinion and Order*, 16 FCC Rcd 8153 (2001).

¹³ In re Application of City of Commerce for Renewal of Authorization for Conventional Other Industrial/Land Transportation Station WPCE379, Pasadena, California, *Order on Reconsideration*, DA 01-1758 (PSPWD rel. July 26, 2001).