

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

In the Matter of)
James A. Kay, Jr. & Buddy Corp.)
Applications for Review and)
Petitions for Reconsideration of)
Cancelled Licenses and Dismissed)
Applications)
Marc Sobel & MS Airwaves, Inc.)
Petitions for Reconsideration of)
Cancelled Licenses and Dismissed)
Applications)

ORDER

Adopted: June 19, 2012

Released: June 22, 2012

By the Commission:

I. INTRODUCTION

1. By this order, we dismiss as moot three applications for review filed by James A. Kay, Jr. (Kay), three petitions for reconsideration filed either separately or jointly by Kay and Buddy Corp., and two petitions for reconsideration filed jointly by Marc D. Sobel (Sobel) and MS Airwaves, Inc. (MS Airwaves) (collectively "Petitioners"). We have elected to treat these matters in a consolidated order because the subject of each appeal involves licenses that were cancelled or applications that were dismissed to implement the Commission's decision to revoke Petitioners' 800 MHz radio licenses.

II. BACKGROUND

2. In 2002, after designating certain licenses held by Petitioners for revocation hearings,¹ the Commission ordered that Petitioners' 800 MHz radio licenses be revoked on findings that Kay and Sobel transferred control of their licenses without authority to do so and lacked candor toward the Commission.² In 2005, the Court of Appeals affirmed the revocation orders,³ and the Supreme Court denied review.⁴

3. Also in 2005, having lost their challenge to the orders directing revocation of their licenses, Kay and Sobel filed a "Motion to Modify Sanctions" in which they asked the Commission to rescind the license revocations and substitute an alternative set of sanctions that they proposed. We denied Petitioners' motion on April 12, 2010,⁵ and further ordered the licensees to cease operating their stations no later than 11 days after release of the decision (April 12 Order).⁶ On April 23, 2010, to implement our decision in the April 12 Order, the Wireless Telecommunications Bureau (Bureau) performed the administrative task of updating our Universal Licensing System (ULS) to reflect the cancellation of the licenses at issue.⁷ On April 30, 2010, the Bureau also dismissed all applications associated with the revoked licenses.⁸

4. On April 21, 2010, two days before the licenses were cancelled in ULS, Kay and Sobel filed a "Petition for Reconsideration" (April 21 Petition) of the April 12 Order, as well as a "Motion for Stay" (April 21 Motion for Stay) of that order pending a decision on the petition. On June 2, 2010, we dismissed the April 21 Petition as repetitious, and, in light of that disposition, dismissed as moot the April 21 Motion for Stay.⁹ Kay and Sobel appealed the 2010 decisions, but the Court of Appeals dismissed the case on jurisdictional grounds,¹⁰ and the Supreme Court again denied review.¹¹

¹ James A. Kay, Jr., *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994), *modified*, 11 FCC Rcd 5342 (1996); Marc Sobel, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 12 FCC Rcd 3298 (1997), *modified*, FCC 97M-82 (released May 8, 1997).

² James A. Kay, Jr., *Decision*, 17 FCC Rcd 1834 (2002), *recon. granted in part and denied in part*, 17 FCC Rcd 8554 (2002) (*Kay Decision*); Marc Sobel, *Decision*, 17 FCC Rcd 1872 (2002), *recon. denied*, 17 FCC Rcd 8562 (2002), *further recon. denied*, 19 FCC Rcd 801 (2004) (*Sobel Decision*). In addition, the Commission denied Petitioners' applications for other 800 MHz licenses and their finder's preference requests in the 800 MHz service.

³ *Kay v. FCC*, 396 F.3d 1184 (D.C. Cir. 2005). The Court of Appeals for the District of Columbia Circuit denied rehearing on April 5, 2005, *id.*, and on December 5, 2005, denied a motion for further stay of the mandate and issued its mandate, *Kay v. FCC*, No. 02-1175 (D.C. Cir. Dec. 5, 2005).

⁴ *Kay v. FCC*, 546 U.S. 871, 126 S. Ct. 176 (2005).

⁵ James A. Kay, Jr. and Marc Sobel, *Memorandum Opinion and Order*, 25 FCC Rcd 4068 (2010).

⁶ *Id.* at 4070-71, ¶ 9.

⁷ Each Kay and Buddy Corp. license in ULS includes a comment: "Revoked per Commission orders in WT Docket No. 94-147, per Memorandum Opinion and Order, FCC 10-55, released April 12, 2010, operating authority terminated as of 12:01 a.m. April 23, 2010." Each Sobel and MS Airwaves license includes the same comment, but references WT Docket No. 97-56.

⁸ A ULS-generated letter dated May 1, 2010, was issued for each application stating that the application was dismissed effective April 30, 2010. Certain applications were also placed on public notice as dismissed as of April 30, 2010. *Public Notice*, Report No. 5855 at 10 and 33-34 (May 5, 2010).

⁹ James A. Kay, Jr. and Marc Sobel, *Second Memorandum Opinion and Order*, 25 FCC Rcd 7639 (2010). While we dismissed the petition as repetitious, we further explained that if the petition had not been procedurally defective, we would have denied it on the merits. *Id.* at 7639, ¶ 1.

¹⁰ *Kay and Sobel v. FCC*, Case No. 10-1155 (Order of Oct. 19, 2010).

III. DISCUSSION

5. *Applications for Review.* While the revocation proceedings were ongoing, Kay filed three applications for review – one on April 9, 2001, and two others on April 10, 2007. Kay's application for review filed on April 9, 2001, sought review of the former Commercial Wireless Division's denial of his petition seeking reconsideration of the dismissal of his modification application, File No. 553244, for Station WNKV762.¹² While his application for review was pending, the Commission revoked the license for Station WNKV762 and the dismissal of all applications associated with that license has become final. We therefore dismiss, as moot, Kay's April 9, 2001 application for review.

6. Kay's applications for review filed on April 10, 2007, sought Commission review of the Mobility Division's dismissal of his petitions seeking reconsideration of the dismissal of his modification application, File No. 613739, for Station WNJL306, as well as his modification applications, File Nos. 628816 and 632210, for Station WNPJ874.¹³ Again, while these applications for review were pending, the Commission revoked the licenses for Stations WNJL306 and WNPJ874 and the dismissal of all applications associated with those licenses has become final. Moreover, in each instance, Kay sought review based solely on the argument that, even though the Commission had issued a revocation order, it had not yet ruled on his Motion to Modify Sanctions pending at the time Kay filed his April 10, 2007 applications for review. As already discussed, that Motion to Modify Sanctions was subsequently dismissed on April 12, 2010. We therefore dismiss, as moot, Kay's April 10, 2007 applications for review.

7. *Petitions for Reconsideration.* On May 24, 2010, Petitioners also filed three petitions seeking reconsideration of the April 23, 2010 cancellation of their licenses in ULS, and two petitions seeking reconsideration of the April 30, 2010 dismissal of applications associated with the revoked licenses. In particular, Sobel and MS Airwaves jointly filed a petition seeking reconsideration of the cancellation of 13 licenses,¹⁴ Kay filed a petition seeking reconsideration of the cancellation of 33 licenses,¹⁵ and Buddy Corp. filed a petition seeking reconsideration of the cancellation of its license for Station WNXW487.¹⁶ In addition, Sobel and MS Airwaves jointly filed a petition seeking

¹¹ *Kay v. FCC*, 131 S. Ct. 2913 (2011).

¹² Application for Review, filed by James A. Kay, Jr. (Apr. 9, 2001) (FCC File No. 553244, Station WNKV762).

¹³ Application for Review, filed by James A. Kay, Jr. (Apr. 10, 2007) (FCC File No. 613739, Station WNJL306); and Application for Review, filed by James A. Kay, Jr. (Apr. 10, 2001) (FCC File Nos. 628816 & 632210, Station WNPJ874).

¹⁴ Petition for Reconsideration, filed by Marc D. Sobel and MS Airwaves, Inc. (May 24, 2010) (Stations KNBT299, KRUS76, WNPY680, WNWB334, WNXL471, WNYR424, WPAD685, WPCA891, WPCG780, WPCZ354, WPDB603, WPF529, and WPFH460).

¹⁵ Petition for Reconsideration, filed by James A. Kay, Jr. (May 24, 2010) (Stations WNIZ676, WNJA910, WNJL306, WNKV762, WNMT755, WNMV402, WNMV773, WNPJ874, WNSK552, WNVL794, WNVW779, WNWB268, WNWB332, WNWK982, WNWV703, WNWQ651, WNXB280, WNXG372, WNXQ353, WNXQ911, WNXS450, WNXS753, WNXW280, WNXW327, WNXW549, WNYQ437, WNYR747, WNZY505, WNZZ731, WPAP683, WPAZ639, WPBW517, and WPBZ518).

¹⁶ Petition for Reconsideration, filed by Buddy Corp. (May 24, 2010) (Station WNXW487).

reconsideration of the dismissal of 15 applications,¹⁷ and Kay and Buddy Corp. jointly filed a petition seeking reconsideration of the dismissal of 48 applications, all associated with revoked licenses.¹⁸

8. We first note that the Bureau's cancellation in ULS of the licenses at issue in the May 24 petitions, as well as the dismissal in ULS of the applications at issue in the May 24 petitions, were purely administrative tasks implementing our decision in our April 12 Order that station operations must cease 11 days after release of that decision. We further note that Petitioners sought reconsideration in each of their May 24 petitions based solely on the argument that, even though the Commission had directed Petitioners to cease operations, it had not yet ruled on their April 21 Petition and associated April 21 Motion for Stay, both pending at the time Petitioners submitted their May 24 petitions. As already discussed, the April 21 Petition and associated April 21 Motion for Stay were subsequently dismissed on June 2, 2010. Once again, all of the licenses that are the subject of these five petitions have been revoked and the decision to revoke those licenses has become final. Moreover, all of the applications that are the subject of these petitions were dismissed because they were associated with the revoked licenses. The dismissal of those applications has also become final. We therefore dismiss, as moot, the five petitions for reconsideration filed on May 24, 2010.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307, 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 April 9, 2001, and the two Applications for Review filed by James A. Kay, Jr. on April 10, 2007, ARE DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), 307, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307, 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by James A. Kay, Jr. on May 24, 2010, seeking reconsideration of the cancellation of 33 licenses, the Petition for Reconsideration filed by Buddy Corp. on May 24, 2010, seeking reconsideration of the cancellation of the license for Station WNXW487, and the Petition for Reconsideration filed by James A. Kay, Jr. and Buddy Corp. on May 24, 2010, seeking reconsideration of the dismissal of 48 applications, ARE DISMISSED AS MOOT.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), 307, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307, 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Marc D. Sobel and MS Airwaves, Inc. on May 24, 2010, seeking reconsideration of the cancellation of 13 licenses, and the Petition for Reconsideration filed by Marc D. Sobel and MS Airwaves, Inc. on May 24, 2010, seeking reconsideration of the dismissal of 15 applications, ARE DISMISSED AS MOOT.

¹⁷ Petition for Reconsideration, filed by Marc D. Sobel and MS Airwaves, Inc. (May 24, 2010) (FCC File Nos. 501542, 697577, R291653, R291655, R291656, R291657, R363525, R363526, R363527, R385324, R385325, R385326, 401353, R401354, and R401355).

¹⁸ Petition for Reconsideration, filed by James A. Kay, Jr. and Buddy Corp. (May 24, 2010) (FCC File Nos. 613739, 628816, 629155, 629436, 640638, 663289, 666464, 694492, R172933, R233304, R235891, R244952, R246722, R250603, R253349, R256113, R259971, R272407, R272664, R272919, R283499, R283501, R283502, R283503, R283504, R283505, R283507, R283508, R283512, R283513, R283514, R283588, R285362, R285367, R289079, R291584, R291608, R308915, R309595, R309596, R341032, R363854, 0000234639, 0000234641, 0002145944, 0002145955, 0002145965, and 0002145975).

12. IT IS FURTHER ORDERED that copies of this order SHALL BE SERVED on James A. Kay, Jr. and Marc D. Sobel.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary