



Federal Communications Commission  
Washington, D.C. 20554

May 25, 2016

DA 16-581

Mr. Joshua Babb  
37211 W. Amalfi Ave.  
Maricopa, AZ 85138

**RE: Order on Reconsideration – Assignment of W3JB to Mr. Scott Phillips**

Dear Mr. Babb:

On December 1, 2015, you filed a petition for reconsideration of the assignment in ULS on November 22, 2015 of call sign W3JB to Mr. Scott Phillips. For the reasons stated below, we deny your petition for reconsideration.

*Background.* Generally, when a call sign shown on an amateur radio station license is canceled on account of the licensee's death it is not available to the vanity call sign system for two years following the cancellation.<sup>1</sup> The Commission's rules exempt close relatives of the deceased licensee from this waiting period.<sup>2</sup> In situations where the Commission determines that a vanity call sign is erroneously assigned to an ineligible grantee after the two-year waiting period would have naturally ended, that vanity call sign becomes unavailable in the system for 30 days.<sup>3</sup>

You filed a vanity call sign application for W3JB on July 21, 2014, claiming to qualify for the exemption from the two-year waiting period on the grounds that you were the deceased licensee's nephew.<sup>4</sup> However, when directed to provide documentation of this close relationship, you instead indicated that the deceased licensee was your great-great-uncle.<sup>5</sup> Because you did not qualify for the exemption, the Division concluded that you should not have been granted call sign W3JB during the two-year waiting period.<sup>6</sup> To rectify the improper grant, the Division proposed to modify your license by replacing W3JB with call sign KD7HLX,<sup>7</sup> but you filed an application on September 14, 2015 to modify your call sign W3JB by replacing it with call sign K6FZ.<sup>8</sup> On October 2, 2015, the Division published a letter notifying you that your September 14 application had been granted and, consequently, modification of your license as proposed in the *Order* was rendered unnecessary.<sup>9</sup> It also informed you that call sign

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<sup>1</sup> 47 CFR § 97.19(c)(3).

<sup>2</sup> 47 CFR § 97.19(c)(3)(ii).

<sup>3</sup> 47 CFR § 97.19(c)(32)(i).

<sup>4</sup> FCC File No. 0006386499.

<sup>5</sup> Joshua A. Babb, *Order Proposing Modification*, DA 15-964, 30 FCC Rcd 8566, 8567 ¶5 (Wireless Telecommunications Bureau, Mobility Division rel. Aug. 26, 2015).

<sup>6</sup> *Id.* at 8567 ¶8.

<sup>7</sup> *Id.*

<sup>8</sup> Letter at 2, dated Oct. 2, 2015, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Joshua Babb (Letter).

<sup>9</sup> *Id.*

W3JB would be unavailable to the vanity call sign system for a waiting period of thirty days, rather than the ordinary two-year waiting period, and that you would be able to apply for call sign W3JB by preference-list application when the call sign became available.<sup>10</sup>

Prior to the end of the waiting period, you sought clarification of this date from a Commission staff member, who calculated that call sign W3JB would become available on November 2, 2015.<sup>11</sup> You subsequently filed two preference-list applications on that date as well as one on November 3 and one on November 5 to modify your call sign K6FZ for W3JB.<sup>12</sup> Mr. Phillips also filed by preference-list application on November 3, 2015, and was awarded call sign W3JB consistent with our standard lottery process, effective November 22, 2015.<sup>13</sup>

In order to investigate why the Universal Licensing System (“ULS”) did not make call sign W3JB available on November 2, you corresponded again with the same staff member.<sup>14</sup> He told you that his advice had been incorrect and that ULS had made the call sign available on November 3 consistent with the Commission’s rules.<sup>15</sup> On December 1, 2015, you filed a petition for reconsideration of the assignment of call sign W3JB to Mr. Phillips, arguing that based on your prior communications with staff and the October 2 letter, W3JB should have been available on November 2, not November 3.<sup>16</sup>

*Discussion.* Petitions for reconsideration must identify a material error, omission, or other reason that justifies further consideration.<sup>17</sup> Your petition does not provide such justification. First, ULS did not err in making call sign W3JB available on November 3, 2015; it correctly calculated the first day that the call sign was available in accordance with the Commission’s rules. ULS began its computation of the thirty-day waiting period on October 3, 2015.<sup>18</sup> Because the amateur radio service rules prevent expired call signs from being available in ULS until the end of the waiting period,<sup>19</sup> ULS calculated the final day of the 30 days – Sunday, November 1 – as the filing date,<sup>20</sup> which it automatically pushed to the next

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<sup>10</sup> *Id.*

<sup>11</sup> Email from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Joshua Babb (Nov. 2, 2015, 6:37 EST).

<sup>12</sup> FCC File Nos. 0007008893 (filed Nov. 2, 2015), 0007009180 (filed Nov. 2, 2015), 0007012551 (filed Nov. 3, 2015), and 0007016644 (filed Nov. 5, 2015).

<sup>13</sup> See FCC File No. 0007011910; see also Amendment of Part 97 of the Commission’s Rules Governing the Amateur Radio Services, *Report and Order*, FCC 06-149, 21 FCC Rcd. 11643, 11658 ¶32 (2006).

<sup>14</sup> Email from Joshua Babb to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Nov. 20, 2015, 6:37 EST).

<sup>15</sup> Email from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Joshua Babb (Dec. 1, 2015, 6:37 EST).

<sup>16</sup> Petition for Reconsideration, filed December 1, 2015, ULS File No. 0007008893.

<sup>17</sup> See 47 CFR 1.106(p)(1).

<sup>18</sup> See 47 CFR § 1.4(b) (computation of time begins the day following notice).

<sup>19</sup> See 47 CFR §§ 97.21, 1.949 (grace period for renewal permitted up to the cancellation date in the system).

<sup>20</sup> See 47 CFR § 1.4(d) (last day for filing must be included in the period of time calculated).

business day.<sup>21</sup> As a result, the final day of the waiting period was November 2, 2015, and ULS properly made the call sign available to applicants by preference-list application on November 3, 2015, the first day after the conclusion of the waiting period.

Second, erroneous staff advice is not grounds for reconsideration. Licensees are obligated to know the Commission's rules.<sup>22</sup> It is well-established that an applicant acts on staff advice at his own risk.<sup>23</sup> Furthermore, we note that you were not prejudiced by this staff advice, as you also filed an application for W3JB on November 3, the correct day. Despite the staff advice you received, the Commission is not barred from upholding the proper operation of ULS in dismissing an application as unavailable pursuant to our rules.<sup>24</sup> As discussed above, dismissal of your application filed on November 2 was proper because ULS had correctly calculated that call sign W3JB was not yet available.

For the reasons stated above, we conclude that you failed to identify a material error of law or fact sufficient to warrant reconsideration of the assignment of call sign W3JB in ULS on November 3. Accordingly, we deny your petition for reconsideration of the assignment of call sign W3JB to Mr. Phillips.

*Ordering Clauses.* 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), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration of the assignment of vanity call sign W3JB to Mr. Scott Phillips, filed by Mr. Joshua Babb on December 1, 2015 IS DENIED.

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.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>21</sup> See 47 CFR §§ 1.4(j) (when filing date falls on a holiday, the last day for filing is proper on the next business day), (e)(4) (filing date defined as last day for action within the waiting period), (e)(1) (defines Saturday and Sunday as holidays).

<sup>22</sup> Allen Leeds, *Order on Reconsideration*, DA 07-340, 22 FCC Rcd 1508, 1524 ¶13 (WTB 2007).

<sup>23</sup> Hinton Telephone Co., *Memorandum Opinion and Order on Reconsideration*, FCC 95-244, 10 FCC Rcd 11625, 11637 ¶42 (1995).

<sup>24</sup> *Id.*