

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

In the Matters of)	
)	
MOBILE RELAY ASSOCIATES)	
)	
Application for new Industrial/Business Pool)	File No. 0000526163
trunked facility on Private Land Mobile Radio)	
frequencies (470-512 MHz) at Avalon, California)	
)	
Petition for Reconsideration)	
)	
Application for modification of the license for)	File No. 0000530288
Station WIL525, Santa Paula, California)	
)	
Petition for Reconsideration)	
)	
Application for new Industrial/Business Pool)	File No. 0000628268
trunked facility on Private Land Mobile Radio)	
frequency pairs (470-512 MHz) at Malibu and)	
Palmdale, California)	
)	
Applications for renewal of the licenses for)	File Nos. 0001018807, 0001028296,
Stations KH7048, Riverside County, California,)	0001028303, 0001280611, 0001280608,
WIB815, La Crescenta, California, WPLQ457,)	0001280607
Santa Paula, California, WNQJ809, Montrose,)	
California, WYY828, Golden, Colorado, and)	
WPMC732, Castlerock, Colorado)	
)	
and)	
)	
Authorizations for Industrial/Business Pool)	
Stations WPII460, WPHK816 and WPPF424,)	
Chatsworth, California)	
)	
and)	
)	
Authorizations for Industrial/Business Pool)	
Stations WII622 and WII664, Upland, California)	
)	
and)	
)	
Authorization for Industrial/Business Pool)	
Station WIJ226, Malibu, California)	

ORDER**Adopted: July 7, 2003****Released: July 8, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. James A. Kay, Jr. (Kay) has filed petitions to deny and/or petitions for reconsideration of the grant of or consent to the captioned applications filed by Mobile Relay Associates and Mobile Relay Associates, Inc. for new stations or for renewal or modification of the subject stations, or filed by other parties to assign the licenses for the subject stations to Mobile Relay Associates. Also before us is a petition filed by Kay requesting that the Commission initiate enforcement action against Mobile Relay Associates, Mobile Relay Associates, Inc., and their principal, Mark J. Abrams (Abrams) (collectively, the MRA parties). In each petition, Kay argues that the MRA parties lack the requisite character to be Commission licensees because they have engaged in abuse of process, misrepresentation and lack of candor to the Commission in connection with applications to assign to them licenses that Kay contends have cancelled automatically pursuant to Section 90.157 of the Commission's Rules. In addition, we address two petitions filed by Mobile Relay Associates seeking reconsideration of the actions of the Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch (Branch) dismissing two of the captioned applications. For the reasons set forth below, we agree with Kay that the licenses for Stations WIJ226, WII664, and WII622 have automatically cancelled, and will modify our licensing records appropriately. We conclude, however, that Kay has not established his broader claims regarding the MRA parties' character qualifications, and accordingly deny his petitions to deny and petitions for reconsideration. We also deny the petitions for reconsideration submitted by Mobile Relay Associates.

II. BACKGROUND

2. *Procedural Background.* Stations WIJ226, WII664, and WII622. On August 16, 2001, El Redondo Termite Control, Inc. (El Redondo) filed an application for authorization to assign the license for Station WIJ226, Malibu, California, to Mobile Relay Associates.¹ The Commission consented to the assignment on August 23, 2001. On September 7, 2001, Fischbeck Construction (Fischbeck) filed an application for authorization to assign the license for Station WII664, Corona, California, to Mobile Relay Associates.² The Commission consented to the assignment on September 17, 2001. On October 31, 2001, Charles and Cornelia Dray dba Chino Hills Patrol (the Drays) filed an application for authorization to assign the license for Station WII622, Upland, California, to Mobile Relay Associates.³ The Commission consented to the assignment on November 7, 2001.

3. On December 4, 2001, Kay submitted to the Commission's Enforcement Bureau a Petition for Enforcement Action. Kay alleged that the licenses for Stations WIJ226, WII664, and WII622 could not be assigned because each had canceled automatically pursuant to Section 90.157 of the Commission's Rules.⁴ Further, Kay requested, based on the invalidity of the licenses, that the Commission hold in abeyance any application to which any of the MRA parties was a party, pending the

¹ FCC File No. 0000562462 (filed Aug. 16, 2001).

² FCC File No. 0000586475 (filed Sept. 7, 2001).

³ FCC File No. 0000644810 (filed Oct. 31, 2001).

⁴ 47 C.F.R. § 90.157.

outcome of an investigation into whether they were qualified to be Commission licensees.⁵ On March 11, 2002, Kay filed a petition for reconsideration of the action awarding the license for Station WIJ226 to Mobile Relay Associates.⁶ On January 10, 2003, the Division sent a letter to the Drays seeking information regarding the operational status of Station WII622 during the period in which the Drays were the licensees.⁷ Cornelia Dray responded to the Division by letter received March 18, 2003.⁸ On April 18, 2003, the Division sent letters to El Redondo and Fischbeck seeking information regarding the operational status of Stations WIJ226 and WII664 during the period in which they were the licensees.⁹ No responses were received.

4. Stations KH7048, WIB815, WPLQ457, WPHK816, WPPF424, WPPI460, WNQJ809, WYY828, WPMC732. On September 4, 2002, Mobile Relay Associates filed an application to renew its license for Station KH7048, Riverside County, California,¹⁰ which the Branch granted on September 12, 2002. On September 13, 2002, Mobile Relay Associates filed applications to renew its licenses for Stations WIB815, La Crescenta, California,¹¹ and WPLQ457, Santa Paula, California,¹² which the Branch granted on September 18, 2002. On September 16, 2002, Paula S. Lukaszewicz filed an application for authorization to assign the licenses for Stations WPHK816 and WPPF424, Chatsworth, California, to Mobile Relay Associates.¹³ Also on September 16, 2002, Procomm filed an application for authorization to assign the license for Station WPPI460, Chatsworth, California, to Mobile Relay Associates.¹⁴ The Commission consented to the assignments on September 30, 2002. On October 11, 2002, Kay filed a petition for reconsideration of the actions consenting to the assignments and granting the renewal applications, on the grounds that the MRA parties lacked the requisite character to be Commission licensees.¹⁵ On April 18, 2003, Mobile Relay Associates filed applications to renew its licenses for Stations WNQJ809, Montrose, California, WYY828, Golden, Colorado, and WPMC732, Castlerock, Colorado,¹⁶ which the Branch granted on April 23, 2003. On May 12, 2003, Kay filed a petition for

⁵ Kay Petition for Enforcement Actcion [sic] (filed Dec. 4, 2001) (Enforcement Petition). Kay supplemented the Enforcement Petition on March 5, April 24, and October 3, 2002. Kay Supplement to Petition for Enforcement Actcion [sic] (filed Mar. 5, 2003) (Enforcement Petition Supplement); Kay Second Supplement to Petition for Enforcement Actcion [sic] (filed Apr. 24, 2002) (Enforcement Petition Second Supplement); Kay Third Supplement to Petition for Enforcement Actcion [sic] (filed Oct. 3, 2002) (Enforcement Petition Third Supplement).

⁶ Kay Petition for Reconsideration (filed Mar. 11, 2002) (WII622 Petition). Mobile Relay Associates filed an opposition on March 20, 2002. Kay filed a reply on April 12, 2002.

⁷ Letter dated January 10, 2003 from John J. Borkowski, Assistant Chief, Public Safety and Private Wireless Division, to Charles and Cornelia Dray d/b/a Chino Hills Patrol.

⁸ Letter dated March 13, 2002 from Cornelia Dray to John J. Borkowski, Assistant Chief, Public Safety and Private Wireless Division (Dray Response).

⁹ Letter dated April 18, 2003 from John J. Borkowski, Assistant Chief, Public Safety and Private Wireless Division, to Robert Steiner, El Redondo Termite Control, Inc.; Letter dated April 18, 2003 from John J. Borkowski, Assistant Chief, Public Safety and Private Wireless Division, to Ken Fischbeck, Fischbeck Construction.

¹⁰ FCC File No. 0001018807 (filed Sept. 4, 2002).

¹¹ FCC File No. 0001028296 (filed Sept. 13, 2002).

¹² FCC File No. 0001028303 (filed Sept. 13, 2002).

¹³ FCC File No. 0001027579 (filed Sept. 16, 2002).

¹⁴ FCC File No. 0001027595 (filed Sept. 16, 2002).

¹⁵ Kay Petition for Reconsideration (filed Oct. 11, 2002) (October Petition for Reconsideration). Mobile Relay Associates and Mobile Relay Associates, Inc. filed an opposition on October 30, 2002. Kay filed a reply on November 19, 2002.

¹⁶ FCC File Nos. 0001280611, 0001280608, 0001280607 (all filed April 18, 2003).

reconsideration of the actions granting these renewal applications, on the grounds that the MRA parties lacked the requisite character to be Commission licensees.¹⁷ Additionally, the renewal granted for Station WYY828 must be set aside because, according to Kay, this license authorizes commercial mobile radio service (CMRS) and the Branch failed to give public notice of this CMRS application as required by Section 309(a) of the Communications Act of 1934, as amended.¹⁸

5. File No. 0000526163 and Station WIL525 (0000530288). On July 16, 2001, Mobile Relay Associates filed an application for authorization to operate a new Industrial/Business Pool station at Avalon, California.¹⁹ On July 19, 2001, Mobile Relay Associates, Inc., filed an application to modify its license for Station WIL525, Santa Paula, California, to add frequencies.²⁰ On October 11, 2002, Kay filed a petition to deny the applications on the grounds that the MRA parties lacked the requisite character to be Commission licensees.²¹ On October 15²² and November 18,²³ 2002, respectively, the Branch dismissed applications 0000526163 and 0000530288 on the grounds that the proposed operations would not provide the required interference protection to co-channel stations. On November 14²⁴ and December 18,²⁵ 2002, respectively, Mobile Relay Associates filed petitions for reconsideration of the dismissals.

6. File No. 0000628268. On October 17, 2001, Mobile Relay Associates filed an application for authorization to operate a new Industrial/Business Pool station at Malibu and Palmdale, California.²⁶ On November 15, 2001, Kay filed a petition to deny the applications on the grounds that the application proposes operations on frequencies and locations that would cause substantial co-channel interference to existing, operating, and fully loaded facilities already licensed to Kay including Stations WIK329, WIK330, WIK761 and WIK762.²⁷ Application 0000628268 remains pending.

7. *Operational Status of Stations WIJ226, WII664, and WII622*. The facts regarding the three licenses are similar. The licenses for Stations WIJ226, WII664 and WII622 authorized operation on community repeaters owned and operated by Motorola.²⁸ Kay purchased the repeaters and customer accounts from Motorola in October 1993.²⁹ Motorola removed its repeater equipment in December 1993, and the facilities were never reconstructed.³⁰ Between December 1993 and January 1994, all three

¹⁷ Kay Petition for Reconsideration (filed May 12, 2003) (May Petition for Reconsideration).

¹⁸ *Id.* at 2 *citing* 47 U.S.C. § 309(a).

¹⁹ FCC File No. 0000526163 (filed July 16, 2001, amended Aug. 17, 2001, Oct. 17, 2001, and Oct. 24, 2001).

²⁰ FCC File No. 0000530288 (filed July 19, 2001, amended Sept. 6, 2001, and Oct. 9, 2001).

²¹ Kay Petition to Deny (filed Oct. 11, 2002) (October Petition to Deny). Mobile Relay Associates and Mobile Relay Associates, Inc. filed an opposition on October 30, 2002. Kay filed a reply on November 19, 2002.

²² Return Letter, Ref. No. 1591108.

²³ Return Letter, Ref. No. 1628816.

²⁴ Mobile Relay Associates Petition for Reconsideration (filed Nov. 14, 2002) (Avalon Petition). On November 20, 2002, Henry Radio Inc. (Henry) filed an opposition. On December 3, 2002, Mobile Relay Associates filed a reply. On December 10, 2002, Henry filed a surreply.

²⁵ Mobile Relay Associates Petition for Reconsideration (filed Dec. 18, 2002) (WIL525 Petition).

²⁶ FCC File No. 0000628268 (filed Oct. 17, 2001, amended Jan. 28, 2002).

²⁷ Kay Petition to Deny (filed Nov. 15, 2001) (November Petition to Deny); *see also* Supplement to Petition (filed Mar. 6, 2002) (incorporating the Enforcement Petition, *supra* note 5).

²⁸ Enforcement Petition at 3-4, 6, 7.

²⁹ *Id.* at 3-4, 6, 7, Exs. 1, 7, 11.

³⁰ *Id.* at 3-4, 6, 7.

licensees switched to Kay's repeater system, which operates on repeaters that were co-located with the Motorola repeaters.³¹ Each licensee signed a contract to operate exclusively on Kay's repeater system, and to cancel its community repeater license.³² Each licensee filled out and signed an FCC Form 405A to cancel the licensee's operating authority,³³ but there is no record of the cancellations ever having been filed with the Commission. Each licensee then operated solely through Kay's system, under Kay's license.³⁴ Kay submitted sworn declarations from the Drays and El Redondo confirming these facts.³⁵ Cornelia Dray's response to the Division also corroborates these facts.³⁶

8. On May 22, 1997, El Redondo's application to renew the license for Station WIJ226 was granted. On November 10, 1997, the Drays' application to renew the license for Station WII622 was granted. On November 26, 1997, Fischbeck's application to renew the license for Station WII664 was granted. The Drays and El Redondo state that they renewed the licenses because they assumed that the renewal reminders they received pertained to the mobile units being used on Kay's repeater system.³⁷

9. *MRA Parties' Character Qualifications.* As noted above, Kay contends that the licenses for Stations WIJ226, WII664, and WII622 were invalid at the time they were assigned to Mobile Relay Associates.³⁸ Kay further states that the MRA parties knew or should have known that the licenses were no longer valid.³⁹ Kay also argues that the MRA parties' efforts to acquire these and other allegedly invalid licenses⁴⁰ demonstrate misrepresentation and lack of candor on the part of the MRA parties. He notes that each assignment application stated that the stations were constructed and operational.⁴¹ He also asserts that each application constituted a false representation that the subject license was valid.⁴² In addition, Kay argues that the efforts of the MRA parties to acquire invalid licenses constitute an abuse of the Commission's processes, in that their purpose is to circumvent and avoid the effects of Sections 1.955(a)(3)⁴³ and 90.157⁴⁴ of the Commission's Rules.⁴⁵

³¹ *Id.* at 3-4, 6, 7

³² *Id.* at 3-4, 6, 7, Exs. 2, 5, 8.

³³ *Id.* at 3-4, 6, 7, Exs. 3, 6, 9.

³⁴ Enforcement Petition Third Supplement at 3-4.

³⁵ Enforcement Petition at Exs. 15, 17.

³⁶ *See* Dray Response at 1-2.

³⁷ Enforcement Petition at Exs. 15, 17.

³⁸ *Id.* at 3-8.

³⁹ Enforcement Petition Second Supplement at 2.

⁴⁰ Kay identified five other licenses acquired by the MRA parties that he contends are invalid, but provides no information in support of that claim. *See* Enforcement Petition at 2-3.

⁴¹ Enforcement Petition at 9; October Petition for Reconsideration at 5; October Petition to Deny at 5.

⁴² Enforcement Petition at 9-10; October Petition for Reconsideration at 5; October Petition to Deny at 5.

⁴³ 47 C.F.R. § 1.955(a)(3) (authorizations automatically terminate, without specific Commission action, if service is permanently discontinued).

⁴⁴ 47 C.F.R. § 90.157 (a license granted under Part 90 of the Commission's Rules cancels automatically if the station has not operated for one year or more).

⁴⁵ Enforcement Petition at 11; October Petition for Reconsideration at 7; October Petition to Deny at 6-7.

III. DISCUSSION

10. *Operational status of Stations WIJ226, WII664, and WII622.* We agree with Kay that the licenses for Stations WIJ226, WII664, and WII622 automatically cancelled.⁴⁶ The undisputed evidence clearly demonstrates that none of the stations operated between 1993 and, at the earliest, 2001. Therefore, pursuant to Sections 1.955(a)(3) and 90.157 of the Commission's Rules, the station licenses cancelled automatically long before applications were filed in 2001 to assign them to Mobile Relay Associates and, indeed, long before the licensees renewed them in 1997. Accordingly we find that no licenses existed at the time of purported renewals or assignments. We find that the grants of the renewal and assignment applications were based solely upon the licensees' failure to inform the Commission of the permanent discontinuance of operation as required under Section 1.955 of the Commission's Rules.⁴⁷ Accordingly, such renewal and assignment are invalid *ab initio* as there was no license extant which could be renewed or assigned.⁴⁸ We will modify the Commission's licensing records accordingly.

11. *Station WYY828.* Kay claims that the renewal granted for Station WYY828 must be set aside because this license authorizes CMRS and the Branch failed to give public notice of the acceptance for filing of this application. In fact, our licensing records reflect that Station WYY828 is not interconnected, which is an essential element of the definition of CMRS under Section 332(d) of the Act.⁴⁹ Thus, based on the record before us, Kay's allegation that the grant must be set aside fails.

12. *MRA Parties' Character Qualifications.* While we agree with Kay that the licenses for Stations WIJ226, WII664, and WII622 cancelled automatically, we also conclude, after careful review of the record, that Kay has not substantiated his broader contention that the facts regarding these licenses establish that the MRA parties lack the requisite character qualifications to be Commission licensees. In particular, Kay has not demonstrated that the MRA parties were aware at the time the three assignment applications were filed that the underlying licenses were no longer valid. Without such a showing, Kay's allegations of misrepresentation, lack of candor, and abuse of process fail.

13. We accord no weight to Kay's belief that the fact that the MRA parties are based in Los Angeles makes it "inconceivable that Abrams was unaware of the status of these community repeaters."⁵⁰ This is but an unsupported supposition. It is not reasonable to impute to anyone knowledge of the status of every channel in a given area. With respect to the evidence in the record, Kay contends that the Dray

⁴⁶ Kay raises the same allegations against the MRA parties in his December 4, 2001 Petition for Enforcement Action, March 11, 2002 petition for reconsideration, October 11, 2002 petition for reconsideration, and October 11, 2002 petition to deny. In fact, the March 11, 2002 petition for reconsideration and October 11, 2002 petition to deny attach and incorporate the December 4, 2001 Petition for Enforcement Action. Because we are treating the Enforcement Petition as an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, we need not separately consider the March 11, 2002 petition for reconsideration. Moreover, we agree with Mobile Relay Associates that this petition was untimely filed, and should be dismissed. See MRA Opposition to WII622 Petition at 1-2.

⁴⁷ 47 C.F.R. § 1.955(a)(3) ("A licensee who discontinues operations shall notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.")

⁴⁸ See, e.g., James A Kay, Jr., *Memorandum Opinion and Order*, 17 FCC Rcd 5951, 5952 ¶ 6 (WTB PSPWD 2002) ("once [expiration] occurred and became final, there was nothing to [renew] because the authorization no longer existed"), and cases cited therein.

⁴⁹ 47 U.S.C. § 332(d).

⁵⁰ October Petition to Deny at 5; October Petition for Reconsideration at 6; see also Reply to Oppositions to October Petition for Reconsideration and October Petition to Deny at 5.

and El Redondo declarations establish that the MRA parties knew that the licenses were invalid.⁵¹ We disagree. The declarations do not indicate that the licensees told the MRA parties that the stations had permanently discontinued operation; in fact, they state that the stations' construction and operational status was not discussed.⁵² We agree with the MRA parties that Kay has not produced any evidence that the MRA parties had reason to question the licensees regarding the validity of the licenses, which, as noted above, the licensees had renewed in 1997.⁵³

14. Kay also submits a copy of a legal opinion to Abrams dated December 13, 2001 analyzing El Redondo's civil liability arising from its agreements with Kay.⁵⁴ Kay infers that the attorney learned the facts concerning El Redondo from Abrams.⁵⁵ Even assuming this to be the case, Kay offers no evidence of when Abrams obtained this information.⁵⁶ Moreover, the letter concluded that Kay could not compel El Redondo to assign the license for Station WIJ226 to him.⁵⁷ The letter did not address the validity of El Redondo's license for Station WIJ226.⁵⁸ Thus, we do not believe that the letter demonstrates any bad faith by Abrams. We conclude that neither this letter nor anything else in the record, individually or collectively, constitutes evidence of misrepresentation, lack of candor, or abuse of process by the MRA parties.

15. Finally, Kay asserts that Abrams' having checked off the box in each assignment application that states the station for the license to be transferred has been constructed and was still operating within the last year constitutes misrepresentation. We disagree and find that the assignee could have relied upon the affirmative statement by the assignors in the applications and the sales contract. Kay has provided no citation requiring greater investigation on the part of the assignee.

16. *Mobile Relay Associates Petitions for Reconsideration.* As noted above, the Branch dismissed Mobile Relay Associates' applications for authorization to operate a new Industrial/Business Pool station at Avalon, California (0000526163) and to add frequencies to its authorization for Station WIL525, Santa Paula, California (0000530288) on the grounds that the proposed operations would not provide the required interference protection to co-channel stations. Specifically, the Branch concluded that the applications were defective because they proposed operations within sixty-four kilometers (forty miles) of fully loaded co-channel stations, in violation of Section 90.313(c) of the Commission's Rules.⁵⁹ In its petitions for reconsideration of the dismissals, Mobile Relay Associates argues that the dismissals

⁵¹ Enforcement Petition Third Supplement at 2; October Petition to Deny at 3; October Petition for Reconsideration at 3.

⁵² Enforcement Petition at Exs. 15, 17. The MRA employee who handled the transaction states that the matter was discussed with the Drays and Fischbeck, and that they represented that the station was constructed and operational. Opposition to October Petition for Reconsideration at Ex. 2; Opposition to October Petition to Deny at Ex. 2.

⁵³ Opposition to October Petition for Reconsideration at 6; Opposition to October Petition to Deny at Ex. 2. In fact, Mobile Relay Associates' agreements with El Redondo, Fischbeck, and the Drays specifically represented that the license was valid. Opposition to October Petition for Reconsideration at Exs. 2, 2A, 2B, 2C; Opposition to October Petition to Deny at Exs. 2, 2A, 2B, 2C.

⁵⁴ Enforcement Petition at Ex. 12.

⁵⁵ Enforcement Petition Supplement at 2.

⁵⁶ Abrams states that he sought this opinion after the assignment, when El Redondo advised him that Kay had threatened El Redondo with legal action. Opposition to October Petition for Reconsideration at Ex. 1; Opposition to October Petition to Deny at Ex. 1.

⁵⁷ Enforcement Petition Supplement at 2.

⁵⁸ *Id.*

⁵⁹ 47 C.F.R. § 90.313(c).

were improper because the requested authorizations within sixty-four kilometers of protected co-channel stations authorizations were for temporary locations, which by definition are secondary to the non-temporary stations of pre-existing licensees, and thus would be required to avoid causing interference to protected co-channel licensees.⁶⁰ We disagree. Section 90.313(c) provides that a frequency “will not be reassigned for use by another facility” within sixty-four kilometers of a protected co-channel station. The rule contains no exception for reassignments for temporary locations.⁶¹ Consequently, we find that the Branch’s conclusion that the applications were defective was correct.

17. With respect to application 0000526163, Mobile Relay Associates argues that, because the application also sought frequencies that were not within sixty-four kilometers of a protected co-channel station, the Branch should have returned the application to the applicant to amend by removing the offending location, rather than dismiss the entire application.⁶² In fact, the Branch did return the application for amendment, on September 14, 2001.⁶³ Mobile Relay Associates amended the application on October 9, 2001, but did not remove the offending location. Thus, we believe that, particularly under the circumstances presented, the Branch was justified in dismissing the amended application was warranted.

18. With respect to application 0000628268, Kay argues MRA’s proposed operation would cause substantial co-channel interference to existing facilities already licensed to Kay under call signs WIK329, WIK330, WIK761 and WIK762.⁶⁴ In this connection, Kay explains that although the Commission’s licensing database for Wireless Radio Services – the Universal Licensing System (ULS) – listed each of these call signs as expired, his applications to renew these licenses have been pending since 1995. In fact, our licensing records reflect that Kay filed renewal applications for each of these licenses on October 12, 1995—which remain pending. Additionally, our licensing records reflect that in December 2000, shortly after the conversion to ULS, call signs WIK329, WIK330, WIK761, and WIK762 were inadvertently listed as “cancelled” despite the pending renewal applications. Licenses continue in effect during pendency of a renewal application, *i.e.*, until the Commission makes a final determination with respect to the renewal application.⁶⁵ Given that Kay’s timely filed renewal applications remain pending, the licenses for call signs WIK329, WIK330, WIK761, and WIK762 continue in effect.⁶⁶ In this connection, we find that MRA’s application 0000628268 is defective for noncompliance with Sections 90.187 and 90.313 of the Commission’s Rules.⁶⁷

⁶⁰ Avalon Petition at 2; WIL525 Petition at 1-2.

⁶¹ Indeed, in the event of interference to a protected licensee, authorization of operations at unidentified temporary locations would make it impossible to determine the source of the interference. We find that this would result in illusory protection for the primary licensee and would weaken or eliminate the rule and the primary licensee’s right to protection from harmful interference.

⁶² Avalon Petition at 3.

⁶³ Return Letter, Ref. No. 1069704.

⁶⁴ Kay Petition to Deny (filed Nov. 15, 2001) (November Petition to Deny); *see also* Supplement to Petition (filed Mar. 6, 2002) (incorporating the Enforcement Petition, *supra* note 5).

⁶⁵ *See* 47 C.F.R. § 1.62(a)(1) (license continues in effect during pendency of renewal application until Commission makes a final determination with respect to the renewal application). Recently, we corrected ULS to reflect that, while the most recent scheduled expiration date for each of these licenses has passed, Kay’s renewal applications regarding these licenses are still pending. *See* FCC File Nos. 0001269896, 0001269884, 0001269892, and 0001269888.

⁶⁶ *Id.*

⁶⁷ 47 C.F.R. §§ 90.187, 90.313.

IV. CONCLUSION

19. For the reasons stated above, we find that the licenses for Stations WIJ226, WII664, and WII622 automatically cancelled because the licensees permanently discontinued operations. Therefore, the purported renewals and assignments to Mobile Relay Associates were void *ab initio*. We will modify the Commission's licensing records to reflect the cancellation of the licenses. To that extent, Kay's Petition for Enforcement Action is granted.

20. We also conclude, however, that the invalidity of these licenses does not call into question the character qualifications of the MRA parties to be Commission licensees. Kay has presented no evidence sufficient to create any dispute regarding the intent of Abrams or Mobile Relay Associates. Consequently, we find that there is no evidence of misrepresentation, lack of candor, or abuse of process before us in this matter. Accordingly, we deny the Petition for Enforcement Action to the extent it sought action against the MRA parties with respect to any other licenses or applications, and we deny Kay's petitions for reconsideration and petitions to deny.

21. For the reasons set forth above, Mobile Relay Associates' petitions for reconsideration of the dismissal of applications 0000526163 and 0000530288 are denied. Section 90.313(c) prohibits assignments within sixty-four kilometers of a protected co-channel station, and contains no exception for temporary locations. Finally, MRA's application 0000628268 is defective for noncompliance with Sections 90.187 and 90.313, and will be dismissed pursuant to Section 1.934(d) of the Commission's Rules.⁶⁸

V. ORDERING CLAUSES

22. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Petition for Enforcement Action filed by James A. Kay, Jr., on December 4, 2001 IS GRANTED IN PART to the extent stated herein and otherwise DENIED IN PART, and the Commission's licensing records SHALL BE MODIFIED to reflect the cancellation of the licenses for Stations WIJ226, WII664, and WII622.

23. IT IS FURTHER ORDERED, pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Sections 1.41 and 1.934(d), 47 C.F.R. §§ 1.41, 1.934(d), that the petition to deny filed by James A. Kay, Jr., on November 15, 2001 IS GRANTED to the extent indicated herein, and that application file no. 0000628268, filed by Mobile Relay Associates on October 17, 2001, IS DISMISSED.

24. IT IS FURTHER ORDERED, 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, 47 C.F.R. § 1.106, that the petition for reconsideration filed by James A. Kay, Jr., on March 11, 2002, IS DISMISSED.

25. IT IS FURTHER ORDERED that the petitions for reconsideration filed by James A. Kay, Jr., on October 11, 2002, and May 12, 2003, ARE DENIED.

26. IT IS FURTHER ORDERED that the petition to deny filed by James A. Kay, Jr., on October 11, 2002, IS DENIED.

27. IT IS FURTHER ORDERED that the petition for reconsideration filed by Mobile Relay Associates on November 14, 2002 IS DENIED.

⁶⁸ 47 C.F.R. § 1.934(d).

28. IT IS FURTHER ORDERED that the petition for reconsideration filed by Mobile Relay Associates on December 18, 2002, IS DENIED.

29. 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunication Commission