

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

In the Matter of)	
)	
CHARLES T. CRAWFORD)	
Licensee of Conventional Business Station)	File No. A060756
WPRL470, Santa Inez, California)	
)	
DENNIS ENYEART)	
Licensee of Conventional Business Station)	File No. A059522
WPRL897, Santa Inez, California)	
)	
RADIOWAVE COMMUNICATIONS)	
Licensee of Conventional Business Station)	File No. A060866
WPLV944, Santa Inez, California)	
)	
WILLIAM SORRENTINO)	
Licensee of Conventional Business Station)	File No. A060755
WPRL252, Santa Inez, California)	
)	
US MOBILE WIRELESS)	
Licensee of Conventional Business Station)	File No. A060916
WPRL260, Santa Inez, California)	

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2002

Released: October 4, 2002

By the Commission:

1. In this *Memorandum Opinion and Order*, we deny a Petition for Reconsideration (Petition) filed on March 4, 2002, by James A. Kay, Jr. (Kay).¹ Kay seeks reconsideration of our decision² dismissing Kay's consolidated Application for Review (AFR),³ which sought reversal of an action by the Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch (Branch) of the Wireless Telecommunications Bureau (Bureau).⁴ In its April 4, 2001 action, the Branch dismissed as untimely Kay's consolidated petition for reconsideration of the grant of the above-captioned applications for Conventional Business Stations WPRL470, WPRL897, WPLV944, WPRL252, and WPRL260, Santa Inez, California.⁵ In the *Crawford Order*, we dismissed the AFR pursuant to

¹ Kay Petition for Reconsideration (filed Mar. 4, 2002) (Petition).

² Charles T. Crawford, et al., *Order*, 17 FCC Rcd 2014 (2002) (*Crawford Order*).

³ Application for Review (filed May 4, 2001).

⁴ Letter from Mary Shultz, Chief Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Robert J. Keller, Esq., on behalf of James A. Kay, Jr. (dated Apr. 4, 2001).

⁵ *Id.* See Request for Dismissal or Denial of Applications (filed Dec. 14, 2000) (Request). We note that the Bureau treated Kay's Request as a petition for reconsideration because Kay requested such treatment.

Section 1.115(c) of the Commission's rules⁶ because it raised new issues, which the Bureau had been afforded no opportunity to consider.⁷ On reconsideration, however, Kay contends that the AFR was proper, that we should have treated it as a petition for reconsideration, and that the dismissal was erroneous.⁸ Therefore, Kay reiterates assertions that he raised in his AFR.⁹ In the alternative, Kay requests that we modify the captioned authorizations pursuant to Section 1.41 of the Commission's rules.¹⁰ For the reasons stated below, we deny Kay's Petition in part and dismiss it in part.

2. Kay makes four arguments in his Petition. First, he argues that his AFR was procedurally proper because the issues raised in his AFR had been placed before the Bureau.¹¹ Second, Kay argues that even if his AFR were improper, we should have remanded the pleading back to the Bureau for consideration.¹² Third, citing *Clarksburg Publishing Co. v. FCC*,¹³ Kay asserts that his arguments must be considered on the merits even if the pleadings are procedurally defective.¹⁴ In the alternative, Kay requests that we initiate proceedings to modify the licenses in question, pursuant to Section 316(a) of the Communications Act of 1934, as amended (Act).¹⁵

3. We reject Kay's argument that his AFR of the Branch decision was proper. Section 5(c)(5) of the Act, as implemented by Section 1.115(c) of our Rules, provides that "no application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."¹⁶ In the instant proceeding, we found that the AFR contained new information and advanced new arguments that the Bureau had no opportunity to consider.¹⁷ Accordingly, we did not consider the new information or arguments advanced by Kay for the first time in his AFR. Kay could have presented these questions of law and fact to the Bureau in a petition for reconsideration.¹⁸ Instead, Kay filed his AFR expressly pursuant to Section 1.115 of our Rules.¹⁹

⁶ 47 C.F.R. § 1.115(c).

⁷ *Crawford Order*, 17 FCC Rcd at 2017-18 ¶ 10. The *Crawford Order* also dismissed as untimely AFR of the Division's Order, which denied Kay's Petition for Reconsideration of the license grant of Station WPRL897. See *Crawford Order*, 17 FCC Rcd at 2018 ¶ 11; Dennis Enyeart, *Order*, 16 FCC Rcd 5441 (WTB PSPWD 2001) (*Enyeart Order*); Petition for Reconsideration (filed Dec. 13, 2000).

⁸ Petition at 2.

⁹ *Id.*

¹⁰ *Id.* at 3 citing 47 C.F.R. § 1.41.

¹¹ Petition at 2.

¹² *Id.*

¹³ *Id.* at 3 citing *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511 (D.C. Cir. 1955).

¹⁴ Petition at 3.

¹⁵ *Id.*, citing 47 U.S.C. § 316(a) and 47 C.F.R. § 1.41.

¹⁶ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c). See e.g., In the Matter of Commission Requirements for Cost Support Material To Be Filed With Access Tariffs on October 3, 1986, *Order*, 2 FCC Rcd 111 (1982).

¹⁷ Kay had not previously argued to the Bureau that he was not afforded adequate notice of the grant of the captioned applications or that the Bureau and the Commission are equitably estopped from applying the requirement of Section 405 of the Act that petitions for reconsideration be filed within thirty days from the date of public notice of an action. See *Crawford Order*, 17 FCC Rcd at 2017-18 ¶ 10.

¹⁸ Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration. 47 C.F.R. § 1.115(c) Note.

¹⁹ See the AFR at 1 citing 47 C.F.R. § 1.115.

4. Further, we reject Kay's argument that we should have treated the AFR as a petition for reconsideration. Section 1.104(b) provides that either a petition for reconsideration or an application for review may be filed within thirty days of *Public Notice* of the action being challenged.²⁰ Because Kay unambiguously labeled his pleading as an application for review and, in the body of the document, expressly invoked Section 1.115 of the Rules, which governs applications for review, we continue to believe that we properly treated the filing as an application for review.

5. In addition, we conclude that *Clarksburg Publishing Co. v. FCC*, relied upon in Kay's Petition, is inapplicable. *Clarksburg* addressed the Commission's obligation to determine whether a potential license grant would result in a concentration of control of communications media inconsistent with the public interest.²¹ *Clarksburg* does not address the explicit requirement in Section 5(c)(5) of the Act that the Commission may not consider any fact or argument presented in an application for review that was not presented below. Because the AFR was properly dismissed, we need not consider the arguments that Kay incorporates by reference in the instant Petition and which we dismissed in our *Crawford Order*.

6. Finally, we dismiss Kay's informal request that seeks to modify the authorizations for the captioned authorizations.²² We are not obligated to consider such pleadings.²³ In the instant case, as a matter of our discretion, we decline to consider Kay's informal request because we believe it would be an inefficient use of our resources to consider the request, which merely reiterates arguments contained in his AFR.²⁴ Therefore, to the extent Kay's pleading informally requests that we modify the licenses in question, we dismiss that request.

7. We conclude that Kay has failed to demonstrate that dismissal of his AFR was erroneous or to provide good cause for consideration of his informal pleading. Therefore, to the extent described above, we deny Kay's reconsideration petition and dismiss Kay's informal request.

²⁰ 47 C.F.R. § 1.104(b).

²¹ *Clarksburg*, 225 F.2d at 518; see Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules, MM Docket No. 84-19, *Notice of Proposed Rulemaking*, 96 FCC 2d 578, ¶ 4 (1984) *proceeding terminated*, *Report and Order*, 101 FCC 2d 402 ¶ 3 (1984).

²² Petition at 3 citing 47 U.S.C. § 316(a), 47 C.F.R. § 1.41; Rayfield Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19513 (WTB PSPWD 2001). While Kay's license modification request urges the Commission to "initiate license modification proceedings" against the underlying authorizations, he does not specifically indicate how he would have the Commission modify the licenses. Based on his previous pleadings in this matter (*i.e.*, application for review, petition for reconsideration), however, it would appear that Kay would ultimately have the Commission either delete certain frequencies or revoke the authorizations. A revocation proceeding would require a hearing pursuant to Section 312 of the Act.

²³ See *Cara Enterprises, Inc., et. al., Memorandum Opinion and Order*, 17 FCC Rcd 8009 ¶ 10 (WTB PS&PWD 2002); *Automobile Club of Southern California, Order on Reconsideration*, 16 FCC Rcd 2934 ¶ 6 (WTB PS&PWD 2001); *Colorado RSA 7B(2) Limited Partnership, Order*, 13 FCC Rcd 22079, 22081 n.17 (1998).

²⁴ See, *e.g.*, *JPJ Electronic Communications, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5516 ¶ 9 (2002).

8. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405(a), and Sections 1.41 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.41, and 1.106 the Petition for Reconsideration filed by James A. Kay, Jr. on March 4, 2002, IS DENIED IN PART AND DISMISSED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary