



3. Information available to the Commission also indicates that James A. Kay, Jr. may have conducted business under a number of names. Kay could use multiple names to thwart our channel sharing and recovery provisions; for example, Kay may inflate his loading by reporting the same mobile users on multiple licenses. We believe these names include some or all of the following: Air Wave Communications; John C. Allen dba Buddy Sales; Buddy Corp.; Buddy Sales; Buddys Sales; Buddy Corp. dba Buddy Sales; Buddy Corp. dba Southland Communications; Consolidated Financial Holdings; Hessman Security; James Kay; James A. Kay, Jr.; Lucky's Two Way Radio; Luckys Two Way Radio; Luckys Two Way Radios; MetroComm; Multiple M Enterprises, Inc.; Oat Trunking Group; Oat Trunking Group, Inc.; Marc Sobel dba Airwave Communications; Southland Communications; Southland Communications, Inc.; Steve Turelak; Triple M Enterprises, Inc.; V&L Enterprises; and VSC Enterprises.

4. We also have information that Kay may willfully cause interference to radio systems, including systems carrying public safety communications traffic, in order to coerce or mislead licensees into retaining him as their communications provider. After allegedly causing interference to the radio systems of others, Kay or his sales staff allegedly calls on the persons experiencing the interference and offers to provide them higher quality communications service.

5. Information before us indicates that Kay and his sales staff have misused the Commission's processes by, for example, fraudulently inducing licensees and others to sign blank Commission forms seeking modification of licenses, or to sign forms the intent of which was misrepresented by Kay or his employees. This reportedly involves Kay or his staff offering to provide ancillary repeater service to land mobile licensees that operate mobiles that communicate through a repeater (mounted on a tower, mountain top or edifice). Kay allegedly then used the forms to cancel the licenses, modify the licenses, or obtain control of the licenses by having them assigned to himself. Kay then provides communication service on the spectrum formerly licensed to the customer. The customer, in some instances, does not realize for years that Kay has misappropriated its license.

6. On January 31, 1994, Commission staff requested information from Kay to determine whether Kay had committed rule violations by not meeting the construction and placed-in-operation requirements of the Commission's Rules.<sup>5</sup> 47 C.F.R. §§ 90.155, 90.631 and 90.633. The staff's letter also requested information to enable the staff to determine if stations licensed to Kay have permanently discontinued operation in violation of our rules. 47 C.F.R. § 90.157. Finally, the letter directed Kay to provide information detailing the loading of end users on Kay's base stations in order to assess Kay's compliance with the channel loading requirements of our rules. 47 C.F.R. §§ 90.313, 90.623, 90.627, 90.631 and 90.633. In order to assess compliance with our construction and operation requirement, the staff requested that Kay identify the stations for which he holds FCC licenses as well as those he manages. The staff directed Kay to note those that are on U.S. Forest Service land. The inquiry letter sent to Kay also directed that he identify all station licenses he holds under all names under which he does business.

7. The letter also requested that Kay substantiate the loading of his

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<sup>4</sup> Inspection of Station WNWK982 at Mount Lukens, CA conducted July 22, 1994 by the FCC's Los Angeles Field Office Bureau.

<sup>5</sup> Letter from W.Riley Hollingsworth, Deputy Chief, Licensing Division, Private Radio Bureau, to James A. Kay, Jr. dated January 31, 1994.

stations by providing customer lists and telephone numbers. Such business records are the Commission's generally acceptable proof of loading. Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End User of Specialized Mobile Radio Systems, 7 FCC Rcd 5558, 5560 (1992). Kay was later assured that proprietary information would be considered confidential.

8. Kay filed a response, but it provided none of the requested information. He simply referenced some unrelated information provided to the Commission staff at other times. Kay failed to provide the requested information after numerous extensions of time, responding at one point that "there is no date...for which the submission of the requested information would be convenient."

9. We will designate this matter for hearing to determine Kay's fitness to remain a Commission licensee, in light of his alleged violations of the Communications Act and the Commission's Rules, his alleged misconduct, and his refusal to respond to the Commission inquiry.

10. Accordingly, IT IS ORDERED that pursuant to Sections 312(a) and (c) of the Act, James A. Kay, Jr. is directed to show cause why his licenses in the Private Land Mobile Radio Services should not be revoked or cancelled<sup>6</sup> at a hearing before an Administrative Law Judge, at a time and place to be designated in a subsequent Order, upon the following issues:

a) To determine whether James A. Kay, Jr. has violated Section 308(b) of the Act<sup>7</sup> and/or Section 1.17 of the Commission's Rules,<sup>8</sup> by failing to provide information requested in his responses to Commission inquiries;

b) To determine whether James A. Kay, Jr. has willfully or repeatedly operated a conventional station in the trunked mode in violation of Section 90.113 of the Commission's Rules;

c) To determine if Kay has willfully or repeatedly violated any of the Commission's construction and operation requirements in violation of Sections 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules;<sup>9</sup>

d) To determine whether James A. Kay, Jr. has abused the Commission's processes by filing applications in multiple names in order to avoid compliance with the Commission's channel sharing and recovery provisions in violation of Sections 90.623 and 90.629;

e) To determine whether James A. Kay, Jr. willfully or maliciously interfered with the radio communications of other systems, in violation of Sections 333 of the Act;<sup>10</sup>

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<sup>6</sup> Several of the rule violations discussed above are subject to an automatic cancellation condition: if the licensee does not meet his or her construction deadline, or if the licensee permanently discontinues operation, the license cancels automatically. See e.g., 47 C.F.R. §§ 90.157, 90.631 and 90.633.

<sup>7</sup> 47 U.S.C. § 308.

<sup>8</sup> 47 C.F.R. § 1.17.

<sup>9</sup> 47 C.F.R. §§ 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and 90.633.

<sup>10</sup> 47 U.S.C. § 333.

f) To determine whether James A. Kay, Jr. has abused the Commission's processes in order to obtain cancellation of other licenses;

g) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether James A. Kay, Jr. is qualified to remain a Commission licensee;

h) To determine if any of James A. Kay, Jr.'s licenses have automatically cancelled as a result of violations listed in subparagraph (c) pursuant to Sections 90.155, 90.157, 90.631 or 90.633 of the Commission's rules; and

11. IT IS FURTHER ORDERED that pursuant to Sections 312(b) and (c) of the Act Kay is directed to show cause why he should not be ordered to cease and desist from failing to operate his Private Mobile Land Radio licenses substantially as set forth in the licenses, from violating Sections 308(b) and 333 of the Act, from violating Commission Rules Sections 1.17, 90.155, 90.157, 90.313, 90.623, 90.627, 90.629, 90.631, 90.633<sup>11</sup> and/or from abuse of processes as described in paragraph 10.

12. IT IS FURTHER ORDERED that the above issues be consolidated for hearing pursuant to § 1.227(a)2) of the Commission's Rules.<sup>12</sup>

13. IT IS FURTHER ORDERED that the Chief, Private Radio Bureau SHALL BE a party to the proceeding.

14. IT IS FURTHER ORDERED, that to avail himself of the opportunity to be heard pursuant to Section 1.91(c) of the Commission's rules,<sup>13</sup> Kay, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause, Hearing Designation Order and a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If a party fails to file an appearance within the time specified, the right of that party to a hearing shall be deemed to have been waived. See Section 1.92(a) of the Commission's rules.<sup>14</sup> Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order. See Section 1.92(a) of the Commission's rules. In the event the right to a hearing is waived by the party to this proceeding, the presiding Officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. See Section 1.92(c) of the Commission's rules.

15. IT IS FURTHER ORDERED that pursuant to Section 312(d) of the Act<sup>15</sup>, the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Commission.

16. IT IS FURTHER ORDERED that irrespective of whether Kay is determined to be qualified to be a Commission licensee, or it is determined appropriate to revoke or cancel any or all of his licenses, it shall be

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<sup>11</sup> 47 C.F.R. §§ 1.17, 90.155, 90.157, 90.623, 90.627, 90.631, and 90.633.

<sup>12</sup> 47 C.F.R. § 1.227(a)(2).

<sup>13</sup> 47 C.F.R. § 1.91(c).

<sup>14</sup> 47 C.F.R. § 1.92(c).

<sup>15</sup> 47 U.S.C. § 312(d).

determined, pursuant to Section 503 of the Act,<sup>16</sup> whether an ORDER FOR FORFEITURE shall be issued against James A. Kay, Jr. for willful and/or repeated violations of the Act and the Commission's Rules discussed in the preceding paragraphs in an amount not to exceed \$10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$75,000 for any single act or failure to act.

17. IT IS FURTHER ORDERED that in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Act.

18. IT IS FURTHER ORDERED that the Secretary send a copy of this order via certified mail-return receipt requested to Dennis K. Brown, Esquire, Brown and Schwaninger, P.C., 1835 K Street N.W., Suite 650, Washington, D.C. 20006, and have this order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

*William F. Caton*  
William F. Caton  
Acting Secretary

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<sup>16</sup> 47 U.S.C. § 503(b).

**Appendix A**

The following call signs are held in the name of James A. Kay, Jr.:

	<b><u>Call Sign</u></b>	<b><u>Service</u></b>	<b><u>California Area</u></b>
1.	KJV843	Business	Montrose Upland Signal Hill Malibu Lake Northridge Van Nuys
2.	WEC934	Business	Montrose Northridge Van Nuys
3.	WIE974	Business	Montrose Northridge Van Nuys
4.	WIF759	Business	Montrose Upland Reseda
5.	WIH315	Business	Montrose Northridge Van Nuys
6.	WIH339	Business	Montrose Corona Northridge Van Nuys
7.	WIH681	Business	Northridge Rancho Palos Verdes Van Nuys
8.	WIH868	Business	Montrose Corona Upland Van Nuys
9.	WIH872	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
10.	WIH886	Business	Montrose Northridge Van Nuys

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
11.	WIH946	Business	Corona Upland
12.	WII253	Business	Northridge Malibu Lake Reseda Valencia Canyon Country Simi Valley
13.	WII619	Business	Montrose Northridge Malibu Lake Van Nuys
14.	WII621	Business	Sylmar Northridge Reseda
15.	WII695	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
16.	WII697	Business	Sylmar Malibu Lake Northridge Van Nuys
17.	WII755	Business	Montrose Northridge Van Nuys
18.	WII787	Business	Montrose Northridge Van Nuys
19.	WII874	Business	Montrose Northridge Malibu Lake Van Nuys
20.	WII905	Business	Montrose Northridge Van Nuys

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
21.	WII909	Business	Northridge Malibu Lake Van Nuys
22.	WIJ267	Business	Northridge Malibu Lake Van Nuys
23.	WIJ310	Business	Montrose Northridge Van Nuys
24.	WIJ316	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
25.	WIJ343	Business	Montrose Northridge Santa Paula Van Nuys
26.	WIJ362	Business	Montrose Northridge Malibu Lake Newbury Park Van Nuys
27.	WIJ533	Business	Montrose Northridge Van Nuys
28.	WIJ635	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
29.	WIJ644	Business	Montrose Northridge Van Nuys

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
30.	WIJ663	Business	Northridge Malibu Lake Van Nuys
31.	WIJ700	Business	Montrose Northridge Van Nuys
32.	WIJ704	Business	Montrose Los Angeles Northridge Malibu Monte Nido Van Nuys
33.	WIJ712	Business	Montrose Northridge Van Nuys
34.	WIJ754	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
35.	WIJ831	Business	Montrose Malibu Lake Northridge Van Nuys
36.	WIJ867	Business	Montrose Los Angeles Van Nuys
37.	WIJ893	Business	Northridge Upland Malibu Lake Reseda Newhall

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
38.	WIJ992	Business	Montrose Northridge Reseda Van Nuys Newhall
39.	WIJ994	Business	Encino Northridge Newhall Canyon County Los Angeles Acton
40.	WIK205	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
41.	WIK208	Business	Newbury Park Santa Paula Van Nuys
42.	WIK216	Business	Corona
43.	WIK220	Business	Sun Valley
44.	WIK261	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
45.	WIK270	Business	Corona
46.	WIK278	Business	Van Nuys Northridge Canoga Park
47.	WIK287	Business	Corona
48.	WIK293	Business	Corona

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
49.	WIK294	Business	Montrose Northridge Van Nuys
50.	WIK303	Business	Montrose Upland Signal Hill Van Nuys
51.	WIK304	Business	Canyon Country Newhall Canoga Park
52.	WIK308	Business	Los Angeles Glendale West Hills
53.	WIK310	Business	Corona
54.	WIK312	Business	Newhall Canoga Park
55.	WIK329	Business	Northridge
56.	WIK330	Business	Northridge
57.	WIK331	Business	Corona
58.	WIK332	Business	Corona
59.	WIK373	Business	Montrose Northridge Santa Paula Van Nuys
60.	WIK374	Business	Corona
61.	WIK376	Business	Corona Newport Beach San Bernardino
62.	WIK377	Business	Montrose Northridge Van Nuys

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
63.	WIK390	Business	Santa Paula Newberry Park Reseda
64.	WIK400	Business	Montrose Northridge Van Nuys
65.	WIK599	Business	Corona
66.	WIK611	Business	Corona
67.	WIK613	Business	Upland Corona
68.	WIK660	Business	Northridge Newbury Park Van Nuys
69.	WIK664	Business	Corona
70.	WIK708	Business	Corona
71.	WIK726	Business	Corona
72.	WIK727	Business	Corona
73.	WIK761	Business	Northridge
74.	WIK762	Business	Northridge
75.	WIK823	Business	Corona
76.	WIK875	Business	Corona
77.	WIK878	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
78.	WIK896	Business	Corona Upland

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
79.	WIK951	Business	Northridge Malibu Lake Van Nuys
80.	WIK983	Business	Corona
81.	WIL235	Business	Corona
82.	WIL256	Business	Corona
83.	WIL260	Business	Corona
84.	WIL342	Business	Corona
85.	WIL350	Business	Corona
86.	WIL372	Business	Montrose Northridge Corona Van Nuys
87.	WIL392	Business	Northridge Rancho Palos Verde Van Nuys
88.	WIL415	Business	Montrose Northridge Van Nuys
89.	WIL432	Business	Montrose Corona Northridge Van Nuys
90.	WIL436	Business	Corona
91.	WIL441	Business	Corona
92.	WIL442	Business	Corona
93.	WIL458	Business	Corona
94.	WIL462	Business	Los Angeles
95.	WIL469	Business	Corona

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
96.	WIL522	Business	Montrose Upland Signal Hill Northridge Corona Los Angeles
97.	WIL574	Business	Van Nuys
98.	WIL625	Business	Montrose Corona Van Nuys
99.	WIL653	Business	San Pedro
100.	WIL659	Business	Santa Paula
101.	WIL663	Business	Signal Hill Malibu Lake Van Nuys
102.	WIL665	Business	Montrose Los Angeles Northridge Van Nuys
103.	WIL697	Business	Montrose Corona Northridge Van Nuys
104.	WIL729	Business	Montrose Upland Signal Hill Malibu Lake Corona Van Nuys
105.	WIL733	Business	Corona Signal Hill Montrose Los Angeles Northridge Malibut Monte Nido Van Nuys

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
106.	WQP957	Business	Northridge Malibu Lake Van Nuys
107.	WNIZ676	Commercial/ Conventional	Corona Upland
108.	WNJA910	Commercial/ Trunked	Corona Northridge Newbury Park
109.	WNJL306	Commercial/ Trunked	Corona
110.	WNKV762	Commercial/ Trunked	Banning Running Springs
111.	WNMT755	Commercial/ Conventional	Corona Montrose
112.	WNMY402	Commercial/ Trunked	Malibu Lake Montrose Corona
113.	WNMY773	Commercial/ Conventional	Corona Crestline Montrose
114.	WNPJ874	Commercial/ Trunked	Newbury Park Montrose Corona
115.	WNQK532	Business	Montrose Northridge
116.	WNQK959	Business/ Trunked	Banning
117.	WNSK552	Commercial/ Trunked	Running Springs Malibu Lake
118.	WNVL794	Commercial/ Conventional	Montrose Corona Running Springs

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
119.	WNVW779	Commercial/ Conventional	Upland Corona Glendora Montrose Altadena
120.	WNWB268	Commercial/ Conventional	Montrose Corona Running Springs
121.	WNWB332	Commercial/ Conventional	Montrose Corona Running Springs
122.	WNWK982	Commercial/ Conventional	Montrose Corona Running Springs
123.	WNWN703	Commercial/ Conventional	Montrose Corona Running Springs
124.	WNWQ651	Commercial/ Conventional	Montrose Corona Running Springs
125.	WNXB280	Commercial/ Conventional	Altadena Montrose Upland
126.	WNXC713	Business	Van Nuys Northridge Montrose
127.	WNXG372	Commercial/ Conventional	Montrose Corona
128.	WNXQ353	Commercial/ Conventional	Corona Montrose
129.	WNXQ911	Commercial/ Conventional	Montrose Corona Running Springs
130.	WNXS450	Commercial/ Conventional	Montrose Corona

The following call signs are held in the name of  
James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
131.	WNXS753	Commercial/ Conventional	Corona Montrose Running Springs
132.	WNXW280	Commercial/ Conventional	Corona Upland
133.	WNXW327	Commercial/	Corona Running Springs Banning
134.	WNXW549	Commercial/ Conventional	Montrose Corona
135.	WNYQ437	Commercial/ Conventional	Corona
136.	WNYR747	Commercial/ Conventional	Montrose Corona
137.	WNZL447	Business	Montrose Northridge Van Nuys
138.	WNZY505	Commercial/ Conventional	Corona
139.	WNZZ731	Commercial/ Conventional	Corona Upland
140.	WPAP683	Commercial/ Conventional	Montrose Corona Banning
141.	WPAZ639	Commercial/ Conventional	Northridge
142.	WPBR746	Business	Sylmar
143.	WPBW517	Commercial/ Conventional	Northridge
144.	WPBX246	Business	Northridge Montrose Sylmar

The following call signs are held in the name of James A. Kay, Jr. (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
145.	WPBX247	Business	Montrose Northridge
146.	WPBZ518	Commercial/ Conventional	Upland Corona Montrose
147.	WPEE253	Business	Acton Corona Montrose

The following call signs are held by Buddy Corp.:

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
148.	WNCW259	Business	Acton
149.	WNKV830	Business/ Trunked	Ventura
150.	WNXW487	Business/ Conventional	Running Springs Corona

The following call signs are held in the name of Oat Trunking Group, Inc.:

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
151.	WNLM440	Business/ Trunked	Van Nuys
152.	WNXM915	Business/ Conventional	Van Nuys

The following call sign is held in the name of Multiple M Enterprises, Inc.: Kay Jr., James A. LP:

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
153.	WYA205	Business/ Trunked	Gardena

The following call signs are held in the name of Marc Sobel:

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
154.	KD53189	Business	Sepulveda
155.	KNBT299	Business/ Conventional	North Hills
156.	KRU576	Business/ Conventional	North Hills
157.	WIH718	Business/ Conventional	North Hills

The following call signs are held in the name of  
Marc Sobel (cont.):

	<u>Call Sign</u>	<u>Service</u>	<u>California Area</u>
158.	WIJ516	Business	Sepulveda
159.	WIJ698	Business	Sepulveda
160.	WIJ716	Business	Sepulveda
161.	WIK548	Business	North Hills
162.	WIK833	Business	Sepulveda
163.	WIK834	Business	Sepulveda
164.	WIL516	Business	North Hills