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Before the
FEDERAL COMMUNICATIONS COMMISSION FEB 10 1995
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
JAMES A. KAY, JR.)
)
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four Part 90 licenses in the)
Los Angeles, California area)

PR DOCKET NO. 94-147
WT DOCKET NO. 94-147

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To: The General Counsel

PETITION FOR RECONSIDERATION

James A. Kay, Jr. (Kay), by his attorneys, pursuant to Section 1.106 of the Commission Rules, 47 C.F.R. §1.106 respectfully requests that the Commission reconsider its decision in the February 3, 1995 Order released by the Office of General Counsel (the Order) . In support of his position, Kay shows the following.

47 C.F.R. §1.115(e)(3) applies only to "applications for review of a hearing designation order issued under delegated authority." However, the Erratum was not a hearing designation order (HDO) released under delegated authority. Rather, it was issued directly by the Commission. Therefore, the Office of General Counsel was in error in referring the Application for Review to the presiding Administrative Law Judge on the basis of Rule Section 1.115(e)(3). Further, Section 0.251(f) of the Commission's Rules, cited by the Order, does not provide any authority for the matter to be referred to the presiding Administrative Law Judge.

Were one to consider the position that the release of an Erratum to a Hearing Designation Order which had been released by the Commission constituted the issuance of an HDO under

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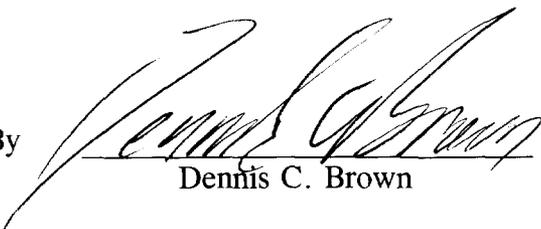
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delegated authority, one would first have to determine that the Commission had delegated authority to the Wireless Telecommunications Bureau by published rule or order in compliance with the manner prescribed by Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §155(c)(1), and by 47 C.F.R. §0.201(d)(1)&(2). However, the Commission has never published any rule or order in accordance with the manner prescribed by 47 U.S.C. §155(c)(1), and 47 C.F.R. §0.201(d)(1)&(2) delegating any authority, whatsoever, to a Wireless Telecommunications Bureau. Therefore, the Erratum could not have been lawfully issued under delegated authority. Since the Erratum was not released under delegated authority, the Erratum cannot be held to have been the issuance of an HDO under delegated authority, and Rule Section 1.115(e)(3) provided no authority for the General Counsel's Action.

Conclusion

The General Counsel should not have referred the Application for Review to the Administrative Law Judge. Therefore, the General Counsel's Order should be reconsidered.

Respectfully submitted,
JAMES A. KAY, JR.

By 
Dennis C. Brown

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Dated: February 10, 1995

CERTIFICATE OF SERVICE

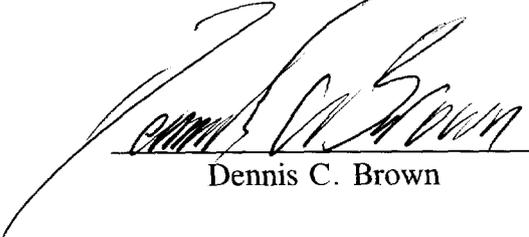
I, hereby certify that on this tenth day of February, 1995, I served a copy of the foregoing Petition for Reconsideration on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

February 10, 1995

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Dennis C. Brown

* By Hand Delivery