

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**ORIGINAL  
RECEIVED**  
FEB 23 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

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

**DOCKET FILE COPY ORIGINAL**

To: Hon. Richard L. Sippel, Presiding Judge

**OPPOSITION TO PETITION FOR LEAVE TO INTERVENE**

James A. Kay, Jr. (Kay), by his attorneys, pursuant to Section 1.45(a) of the Commission's Rules, hereby respectfully opposes the Petition for Leave to Intervene filed in the above captioned matter by Viking Freight Systems, Inc. (Viking). In support of his position, Kay shows the following.

Viking failed to demonstrate that it met the basic requirements for intervention as a party. Section 1.223(b) of the Commission's Rules requires that a person desiring to participate as a party must "set forth the interest of the petitioner in the proceedings, [and] must show how such petitioner's participation will assist the Commission in the determination of the issues in question," 47 C.F.R. §1.223(b). Viking's interest appears to be solely that of a person which desires an additional radio channel. However, Viking failed to demonstrate how its interest in obtaining authorization for an additional radio frequency is uniquely distinguished from the interests of the tens of thousands of users of radio communications, any of which would be pleased to have an additional channel.

No. of Copies rec'd \_\_\_\_\_  
List A B C D E

*ATG*

Viking admitted that it had no evidence to offer and that it did not desire to participate in discovery. Viking's admission that it did not desire to present evidence further demonstrated that Viking has no interest which is sufficient for it to be permitted to intervene. Although Viking might not desire to participate in discovery, intervention of Viking as a party would impose on existing parties the additional burden of engaging in discovery of Viking to ascertain whether, although Viking might not desire to present evidence, Viking has any information which might be discoverable.

Viking failed to demonstrate that it would benefit in any way from participation in the hearing. The Commission has numerous methods of reassigning channels which it has recovered, but Viking presented no assurance that it was positioned to receive any greater preference than any of tens of thousands of other radio users in the reassignment of any channel which might become available as a result of the hearing.

Viking failed to demonstrate why it, as uniquely distinguished from any of the tens of thousands of similarly situated radio users who desire additional frequencies, should be served with "all official filings and orders in this proceeding." Since Viking does not desire to present evidence, its position is merely that of a spectator who'd like, somehow, to suit up and get into the game. If Viking desires copies of the documents of the instant proceeding, it, like the tens of thousands of similarly situated spectators, can make copies of the Commission's records at its own expense. Viking, however, failed to show any reason why the cost of its observation of the proceeding should be borne by the existing parties and the Commission.

Viking failed to demonstrate that Viking, the Commission, the Presiding Judge, the existing parties, or the public interest would be served in any way by its participation in cross examination. Viking failed to demonstrate that it cannot rely on the Bureau and on Kay to conduct adequate cross-examination to protect whatever interest Viking may believe that it has in the instant matter. Viking also failed to demonstrate that it cannot rely on the Bureau and on Kay to present proposed findings of facts and conclusions of law based on the evidence presented at hearing. In view of Viking's failure to demonstrate total incompetence by the Bureau and by Kay, Viking's participation was not shown to be in the public interest.

Section 1.223(b) of the Commission's Rules requires that a petition for leave to intervene "must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition," 47 C.F.R. §1.223(b). However, the declaration of Connie Dilitto (Dilitto) attached to Viking's petition was "subscribed and sworn to by [Dilitto] this 16th day of February, 1993," more than two full years prior to the filing of Viking's petition. Since the Designation Order in the above captioned matter was not released until December 14, 1994, the declaration of Connie Dilitto is obviously false on its face, because Dilitto could not have had any knowledge of the factual allegations set forth in the petition. Accordingly, Viking failed to meet another of the threshold requirements for the filing of its petition.

The eagle of the Great Seal of the Commission is well equipped with talons for seizing a target and a strong, sharp beak for ripping and tearing to the core. The turkey vulture, however, is not equipped to join a battle, having no weaponry of its own to bring to bear.

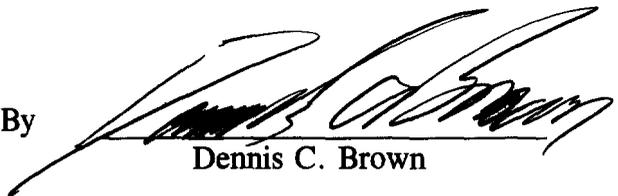
Nature, therefore, has decreed that the vulture shall be limited to observing the fray from afar, and to wait until all movement has ceased before scavenging the remains, if any. If, like the "Peanuts" character, Snoopy, Viking fancies itself a vulture, it should be limited to peering patiently and silently from the eaves of its doghouse until this proceeding has been concluded.

Conclusion

For all the foregoing reasons, Viking's Petition for Leave to Intervene should be dismissed or denied.

Respectfully submitted,  
JAMES A. KAY, JR.

By



Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: February 23, 1995

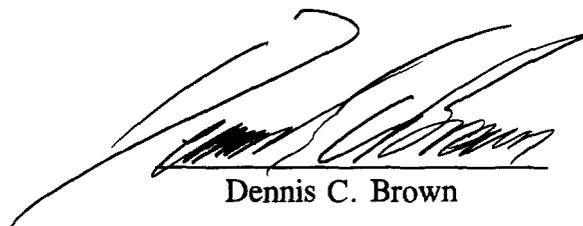
CERTIFICATE OF SERVICE

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

Robert J. Keller, Esq.  
Robert J. Keller, P.C.  
4200 Wisconsin Avenue, N.W. #106-261  
Washington, D.C. 20016-2146

Gary P. Schonman, Esquire \*  
Federal Communications Commission  
Hearing Branch  
Mass Media Bureau  
Suite 7212  
2025 M Street, N.W.  
Washington, D.C. 20554

W. Riley Hollingsworth, Esquire  
Deputy Associate Bureau Chief  
Office of Operations  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325



Dennis C. Brown

\* By Hand Delivery