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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

WT Docket No. 94-147

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge
Richard L. Sippel

**JAMES A. KAY JR.'S REPLY TO THE
WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO MOTION FOR PARTIAL SUMMARY DECISION**

James A. Kay, Jr. ("Kay"), by his attorneys, respectfully files this Reply to the Wireless Telecommunications Bureau's Opposition to Motion for Partial Summary Decision, and in support thereof states as follows:

1. On April 17, 1995, Kay filed a Motion for Partial Summary Decision (the "Motion") requesting the Presiding Judge to grant summary decision in his favor on the issues at ¶¶ 10(a), 10(c), 10(d), 10(e), 10(f), and 10(h) of the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315, released December 13, 1994 ("HDO").

2. The Wireless Telecommunications Bureau (the "Bureau") filed an Opposition to the Motion on May 1, 1995 (the "Opposition").

3. Kay's position throughout these proceedings has been that the Bureau has failed to produce any evidence demonstrating that Kay has violated any of the Commission's Rules that form the basis of the issues set forth in ¶¶ 10(a), 10(c), 10(d), 10(e),

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10(f), and 10(h) of the HDO. The Bureau has manifested this position in at least two (2) ways.

4. First, in the Opposition, the Bureau makes no effort to identify any facts that support the issues set forth in §§ 10(a), 10(c), 10(d), 10(e), 10(f), and 10(h) of the HDO despite the fact that the Motion contains an extensive discussion of the items that the Bureau must prove to establish that Kay has violated certain Commission Regulations. Instead, the Opposition focuses on discovery issues and unsubstantiated allegations that the Motion for Partial Summary Decision is another "attempt by Kay to avoid going to trial." The Bureau's Opposition is consistent with the Bureau's position throughout these proceedings: hide the ball from Kay.

5. Second, consistent with the preceding paragraph, the Bureau has vigorously opposed every effort by Kay to obtain discovery. Among other things, Kay has filed a request for production of documents, interrogatories and numerous Freedom of Information Act requests with the Bureau. The only meaningful documents that the Bureau has provided have been the approximately forty-two (42) attachments produced in response to Kay's First Set of Interrogatories. The Bureau's failure to provide information concerning the charges against him has severely hampered Kay's efforts to defend himself against the charges in the HDO. In short, Kay cannot defend himself against charges which he is not aware of.

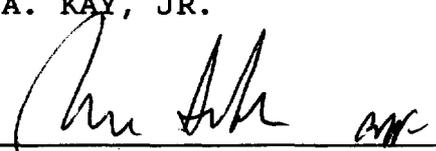
6. In addition to the Bureau's continuing failure to produce any evidence demonstrating that Kay has violated Commission Rules, according to several witnesses who were contacted by Kay's attorneys (or their staff) for purposes of taking depositions, the Bureau has taken the additional step of advising such witnesses that they are not to speak with Kay or his attorneys regarding these proceedings in the absence of a court ordered subpoena. Consequently, Kay's efforts to obtain information to refute the allegations in the HDO, to support his Motion for Partial Summary Decision and to oppose the Bureau's recent Motion for Summary Decision have been fruitless.

7. The Bureau's continued failure to produce evidence in support of the issues at ¶¶ 10(a), 10(c), 10(d), 10(e), 10(f), and 10(h) of the HDO is sufficient prima facie proof that the Bureau cannot substantiate the corresponding allegations in the HDO. Consequently, Kay is entitled to summary decision on those issues.

WHEREFORE, Kay requests that the Presiding Judge issue a partial summary decision in favor of Kay with respect to the issues at ¶¶ 10(a), 10(c), 10(d), 10(e), 10(f), and 10(h) of the HDO.

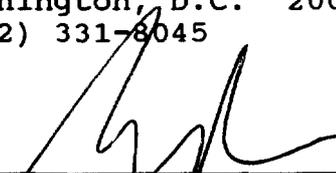
Respectfully submitted,

JAMES A. KAY, JR.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing James A. Kay Jr.'s Reply to the Wireless Telecommunications Bureau's Opposition to Motion for Partial Summary Decision was hand-delivered on this 22nd day of January, 1996 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
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and sent via first-class mail, postage prepaid on this 22nd day of January, 1996 to:

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