

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

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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

To: Administrative Law Judge
Richard L. Sippel

WIRELESS TELECOMMUNICATIONS BUREAU'S
MOTION FOR LEAVE TO FILE SUPPLEMENT
AND
SUPPLEMENT TO MOTION FOR SUMMARY DECISION AND
ORDER REVOKING LICENSES

1. On December 4, 1995, the Wireless Telecommunications Bureau filed a Motion for Summary Decision and Order Revoking Licenses ("Motion"). The Bureau's Motion requested, among other things, that the Presiding Judge revoke the licenses of James A. Kay, Jr. ("Kay") and terminate this proceeding. Upon further review, the Bureau believes it is necessary and appropriate to *limit* the relief that it initially sought in its Motion. Wherefore, the Bureau respectfully requests leave to supplement its Motion to the extent indicated below.

2. Although there are 164 call signs identified in Appendix A of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 (released December 13, 1994), the Bureau wishes to clarify that its Motion seeks revocation at this time only of the licenses that are identified in Appendix A at

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Nos. 1-152. These licenses are held either in Kay's name or in the names of entities ("Buddy Corp." and "Oat Trunking Group, Inc.") that Kay wholly owns and controls.¹ Therefore, in the event the Presiding Judge grants the Bureau's pending Motion and concludes that Kay is basically unqualified to be a Commission licensee, the Presiding Judge should revoke the licenses that are identified in Appendix A at Nos. 1-152.

3. The Bureau's Motion does not seek revocation at this time of the licenses identified in Appendix A at Nos. 153-164. These licenses are held in the names of entities ("Multiple M Enterprises, Inc.: Kay, Jr., James A. LP" and "Marc Sobel") in which the full nature and extent of Kay's involvement remains unclear.² Therefore, in the event the Presiding Judge grants the Bureau's pending Motion and concludes that Kay is basically unqualified to be a Commission licensee, this proceeding should not be immediately terminated because further proceedings will be necessary for the very limited purpose of determining whether the licenses identified in Appendix A at Nos. 153-164 are attributable to Kay and should also be revoked.³

¹ On March 10, 1995, Kay responded to the Bureau's First Set of Interrogatories. Therein, at pp. 3-4, Kay represented that he is the sole shareholder and sole director of Buddy Corp. and of Oat Trunking Group, Inc.

² On March 10, 1995, Kay responded to the Bureau's First Set of Interrogatories. Therein, at p. 5, Kay represented that Multiple M Enterprises, Inc.: Kay Jr., James A. LP is a limited partnership in which Kay is the limited partner and Multiple M Enterprises, Inc., of which Vida Knapp is President, is the general partner. At p. 16, Kay represented that Marc Sobel performs various technical services for Kay, and Kay manages stations which are authorized to Marc Sobel.

³ Because further proceedings will be required regardless of whether the Presiding Judge grants the Bureau's Motion, Multiple M Enterprises, Inc.: Kay, Jr., James A. LP and Marc Sobel should be made parties to this proceeding and afforded the opportunity to enter formal appearances.

4. Accordingly, the Bureau respectfully requests that the Presiding Judge accept this supplement to its pending Motion for Summary Decision and Order Revoking Licenses.⁴

Respectfully submitted,
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February 23, 1996

⁴ On February 22, 1996, Kay filed a "Motion for Leave to File Reply to the Wireless Telecommunications Bureau's Consolidated Response" accompanied by a previously-filed reply pleading. Kay's motion should be denied. Kay acknowledges that by Order, FCC 96M-147 (released February 20, 1996), the Presiding Judge ordered the reply pleading to be stricken as unauthorized. Kay's request to again have the Presiding Judge consider the reply pleading is nothing more than a petition for reconsideration of the Presiding Judge's interlocutory ruling, which is specifically prohibited by § 1.106(a)(1) of the Commission's Rules. Furthermore, contrary to Kay's claim at n. 1 of his motion, § 1.294(c)(1) bestows no entitlement to reply to the Bureau's February 8, 1996, Consolidated Response. Section 1.294(c)(1) pertains to petitions to amend, modify, enlarge, or delete issues, and there are no such petitions pending in this proceeding. Additionally, notwithstanding Kay's arguments at ¶¶ 6-7 of his motion, Kay has had *substantial* opportunity to advance his positions concerning the Bureau's Motion, and Kay cannot legitimately claim that he would be prejudiced by being denied the opportunity to file an unauthorized pleading. Finally, the Bureau's filing of the instant supplement to its Motion -- which *narrows* the relief that was initially requested -- does not confer any rights upon Kay to *expand* the scope of his opposition to the Bureau's Motion.

CERTIFICATE OF SERVICE

I, Natalie Moses, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certify that I have, on this 23rd day of February 1996, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Motion for Leave to File Supplement and Supplement to Motion for Summary Decision and Order Revoking Licenses" to:

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