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

FEDERAL COMMUNICATIONS COMMISSIO.
OFFICE OF SECRETARY

In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred sixty four Part 90)
Licenses in the Los Angeles, California, Area)

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To: Administrative Law Judge
Richard L. Sippel

WIRELESS TELECOMMUNICATIONS BUREAU'S
REQUEST FOR CERTIFICATION

1. The Wireless Telecommunications Bureau hereby respectfully requests the Presiding Judge to certify to the Commission for resolution, pursuant to § 0.341(c) of the Commission's Rules, the question as to whether the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 (released December 13, 1994) ("Show Cause Order"), in this proceeding should be modified to the extent indicated below. In support whereof, the following is shown.

2. The Commission commenced this proceeding to determine whether James A. Kay, Jr. ("Kay") is basically qualified to remain a license, and, if not, whether his Part 90 licenses should be revoked. The Show Cause Order, at ¶ 1, stated that Kay holds 164 such Part 90 licenses and, at Appendix A, identified each of the specific call signs involved in this case. The call signs at Nos. 1-147 of Appendix A are identified as being held personally by Kay in

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his own name. The remaining call signs in Appendix A, however, are identified as being held in the names of entities other than Kay. They are: Buddy Corp. (Nos. 148-150); Oat Trunking Group, Inc. ("Oat Trunking") (Nos. 151-152); Multiple M Enterprises, Inc.: Kay Jr., James A. LP ("Multiple-M") (No. 153); and Marc Sobel ("Sobel") (Nos. 154-164). These latter entities were included in Appendix A because, as explained in the Show Cause Order at ¶ 3, information available to the Commission indicated that Kay may have conducted business under a number of different names, including Buddy Corp., Oat Trunking, Multiple-M and Sobel. The Show Cause Order did not make these entities parties to this proceeding or specify issues concerning their compliance or qualifications.

3. On December 4, 1995, the Bureau filed a Motion for Summary Decision and Order Revoking Licenses ("Motion"). The Bureau's Motion requested, among other things, that the Presiding Judge conclude that Kay is basically unfit to be a licensee, revoke Kay's licenses, and terminate this proceeding. Subsequently, on February 23, 1996, the Bureau filed a Supplement to its Motion articulating exactly which of the licenses in Appendix A should be revoked. Specifically, the Bureau indicated that it is seeking revocation of the licenses identified at Nos. 1-152 of Appendix A because these licenses are held either in Kay's name or in the names of entities (Buddy Corp. and Oat Trunking) that Kay wholly owns and controls.¹ The Bureau further stated in its Supplement that it is not seeking revocation of the 12 remaining licenses identified at Nos. 153-164 of Appendix A because

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.

these licenses are held by entities (Multiple-M and Sobel) in which the full nature and extent of their relationship to Kay is unclear.² The Bureau took the additional position in its Supplement that, even in the event the Presiding Judge were to grant the Bureau's Motion, conclude that Kay is basically unqualified, and revoke the first 152 licenses in Appendix A, further, very limited, proceedings would nonetheless be warranted on the narrow question of whether the remaining 12 licenses in Appendix A are attributable to Kay and also should be revoked. Finally, the Bureau indicated in its Supplement that Multiple-M and Sobel should be made parties to this proceeding.³

4. Upon further reflection, the Bureau believes that the Show Cause Order should be modified to exclude from this proceeding the licenses that are held in the names of Multiple-M and Sobel because these licenses are outside the scope of this case as framed by the Commission. As noted above, the Show Cause Order did not make Multiple-M or Sobel parties to this proceeding or designate specific compliance-related or basic qualifying issues against them. Furthermore, the full nature and extent of the relationship that Multiple-M and

² In his March 10, 1995, response to the Bureau's First Set of Interrogatories, at p. 5, Kay represented that he is a limited partner in Multiple-M. 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 By letter, dated February 22, 1996, the Bureau alerted the Presiding Judge that it intended to file the Supplement to its Motion, and it respectfully requested the Presiding Judge to await receipt of the Supplement before rendering a decision on the Motion. It appears that the Presiding Judge may have inadvertently construed the Bureau's letter as requesting a deferral of action on the Motion for some longer period of time until after the conclusion of further proceedings. See Order, FCC 96M-26 (released March 1, 1996), at ¶ 1. The Bureau regrets any misunderstanding that its letter may have caused, and it takes this opportunity to clarify that it seeks a decision on its Motion, as supplemented, and consistent with the instant request for certification, at the earliest possible time.

Sobel may have with Kay is unknown, and, in the Bureau's opinion, should be explored, at least initially, in the context of a non-adjudicatory investigation. Under these circumstances and given the fact that the stated focus of this proceeding has always been, and remains, exclusively on determining whether Kay possesses the basic qualifications to remain a Commission licensee, the Bureau submits that the Presiding Judge should certify to the Commission the matter of modifying the Show Cause Order to delete the Multiple-M and Sobel licenses from the instant case. Certification is appropriate in this instance because neither the Presiding Judge nor the Bureau has the delegated authority to independently modify the Show Cause Order.

5. The Bureau submits that this course of action would serve the public interest because it would facilitate the orderly disposition of scores of licenses that Kay holds and controls, while simultaneously eliminating the ambiguity introduced into this case by the Show Cause Order concerning the status of the dozen licenses held collectively by Multiple-M and Sobel. Indeed, by certifying the matter discussed above to the Commission at this time, the Presiding Judge would remove from consideration in this proceeding the disposition of the licenses identified at Nos. 153-164 of Appendix A and permit the efficient and unfettered adjudication of all of the remaining licenses identified at Nos. 1-152 which are directly attributable to Kay.⁴

⁴ The removal of the Multiple-M and Sobel licenses from this proceeding eliminates any impediment to the immediate grant of the Bureau's pending Motion and the revocation of licenses held in Kay's name and the names of entities (Buddy Corp. and Oat Trunking) that Kay wholly owns and controls. Furthermore, the removal of the Multiple-M and Sobel licenses would eliminate the need for further proceedings, enlargement of issues, and addition of parties as to Multiple-M and Sobel, thus allowing for the early termination of this case and dramatically conserving very scarce Commission resources.

6. Accordingly, the Bureau requests the Presiding Judge to issue an order certifying to the Commission the question as to whether the Show Cause Order in this proceeding should be modified as indicated above.

Respectfully submitted,
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March 6, 1996

CERTIFICATE OF SERVICE

I, Natalie Moses, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certify that I have, on this 6th day of March 1996, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Request for Certification" to:

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