

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

DOCKET FILE COPY ORIGINAL

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

RECEIVED

MAR 12 1996

To: Administrative Law Judge
Richard L. Sippel

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**OPPOSITION OF JAMES A. KAY, JR. TO
WIRELESS TELECOMMUNICATIONS BUREAU'S REQUEST FOR CERTIFICATION**

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 1.294(b) of the Commission's Rules, files this Opposition to the Wireless Telecommunications Bureau's (the "Bureau") Request for Certification. In support thereof, Kay states as follows:

1. On December 13, 1994, the Bureau released its Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 94-147 (the "HDO").

2. One year later, on December 4, 1995, the Bureau filed a Motion for Summary Decision seeking to revoke Kay's licenses and terminate the above-captioned proceeding on the basis of Kay's alleged pre- and post-designation misconduct.

3. On February 23, 1996, fourteen (14) months after issuance of the HDO and three (3) months after it filed its Motion for Summary Decision, the Bureau filed a Motion for Leave to File Supplement and Supplement to Motion for Summary Decision and Order Revoking Licenses (the "Motion for Leave").

No. of Pages: _____
Listed: _____

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4. In the Motion for Leave, the Bureau sought to delete twelve (12) licenses from the initial one hundred sixty-four (164) licenses that the Bureau previously sought to revoke in its Motion for Summary Decision on the basis that the twelve (12) licenses were not properly owned by Kay or a Kay-controlled entities.

5. On March 6, 1996, two (2) weeks after the Motion for Leave was filed, the Bureau filed a Request for Certification, requesting that the Presiding Judge certify the question of whether the HDO should be modified in a manner consistent with the Motion for Leave (i.e., to delete twelve (12) licenses from the HDO and the Motion for Summary Decision).

6. The only Commission Rule cited by the Bureau is Section 0.341(c) of the Commission's Rules, which provides:

(c) Any questions which would be acted upon by the Chief Administrative Law Judge, the Review Board or the Commission, if it were raised by the parties, may be certified by the Administrative Law Judge on his own motion, to the Chief Administrative Law Judge, the Review Board, or the Commission, as the case may be. (emphasis added)

7. The Bureau's reliance on the aforesaid Rule is, in two respects, fundamentally flawed.

8. The question that forms the basis of the Motion for Leave and the Request for Certification is whether the twelve (12) licenses can be deleted at this late stage from the HDO and the Motion for Summary Decision. The Bureau has not even alleged that this question could "be acted upon by the Chief Administrative Law Judge, the Review Board or the Commission." Moreover, the Bureau has not shown, in any respect, that this is

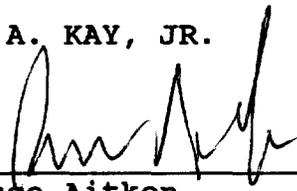
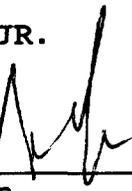
not a matter that is within the authority of the Presiding Judge to act upon, by summary decision or otherwise. In the absence of a legal basis for the Commission to consider the issue, the issue may not be certified to the Commission.

9. Second, and more obvious on its face, the Bureau cites no authority for the proposition that the Bureau can request the Presiding Judge to certify the issue to the Commission. The above-referenced Commission Rule plainly states that the Presiding Judge, on his own motion, may certify certain narrow questions to the Chief Administrative Law Judge, the Review Board or the Commission. See Frank H. Yemm, 39 RR2d 1657, 1659 (1977) ("Consistent with the statutory provisions, if the Presiding Judge questioned the validity of the order on its face, he should have certified the question to the Commission on his own motion as provided in Rule 0.314(c)[sic].") (emphasis added). The Bureau, not the Presiding Judge, made the request that the issue be certified. It has shown no reason why the Presiding Judge should certify the matter, at his discretion. No such reason is evident on the record herein. Consequently, the Bureau's Request for Certification must be denied.

WHEREFORE, for the reasons set forth herein, Kay respectfully requests that the Wireless Telecommunications Bureau's Request for Certification be denied and that the Presiding Judge grant such other and further relief as is just and proper.

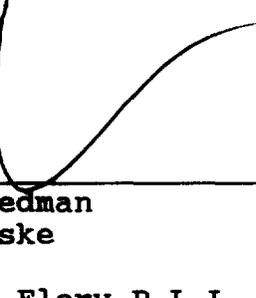
Respectfully submitted,

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CERTIFICATE OF SERVICE

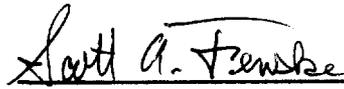
I hereby certify that a true and correct copy of the foregoing Opposition of James A. Kay, Jr. to Wireless Telecommunications Bureau's Request for Certification was hand-delivered on this 12 th day of March, 1996 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 220
Washington, D.C. 20554

Gary P. Schonman, Esquire
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and sent via first-class mail, postage prepaid on this 12 th day of March, 1996 to:

W. Riley Hollingsworth, Esquire
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