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

To: Administrative Law Judge
Richard L. Sippel

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WIRELESS TELECOMMUNICATIONS BUREAU'S REPLY

1. On March 15, 1996, James A. Kay, Jr. ("Kay") filed an opposition to the Bureau's Supplement to Motion for Summary Decision and Order Revoking Licenses. The Bureau hereby submits its reply. The Bureau recognizes that the Commission's rules do not contemplate the filing of responsive pleadings in such circumstances. Consequently, the Bureau respectfully requests leave to file the instant reply in order to ensure that the Presiding Judge has a complete and accurate record before him.

2. The Bureau filed its Supplement on February 23, 1996. The sole purpose of the Supplement was to *limit* the scope of the relief that the Bureau had initially requested in its Motion for Summary Decision and Order Revoking Licenses. Specifically, the Bureau indicated that it is seeking revocation of the licenses identified at Nos. 1-152 of Appendix A to 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"), rather than all of the 164 licenses identified in Appendix A.

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3. Kay's pleading far exceeds the scope of the Bureau's supplemental filing and provides no additional information whatsoever which would assist the Presiding Judge in ruling on the pending motion for summary decision. Indeed, Kay's pleading consists of a wide assortment of exaggerated claims and disjointed suppositions. For example, simply because the Bureau sought to exclude 12 licenses from revocation does not indicate the existence of some ominous flaw in the Bureau's case. To the contrary, the Presiding Judge has recognized the propriety of the Bureau's action in his Order, FCC 96M-35 (released March 15, 1996), certifying the 12 licenses to the Commission for deletion from the Show Cause Order. Moreover, Kay's claim, that the Bureau is manipulating the Commission's processes by seeking summary decision to avoid prosecuting a case it knows it cannot win, is utter nonsense.¹ The record clearly reveals that the Bureau tried repeatedly to obtain critical loading information from Kay during discovery *in order to properly prepare for, and meet its burdens at, the hearing*. But for Kay's recalcitrant behavior, this case would have gone forward on schedule. Finally, the Review Board's recent decision in Capitol Radiotelephone, Inc., FCC 96R-1 (released February 23, 1996) is inapposite. The Capitol Radiotelephone case involved findings of non-malicious interference of limited duration between paging companies. Unlike the instant case, Capitol Radiotelephone had nothing whatsoever to do with whether the licensee willfully and repeatedly violated its statutory obligations pursuant to § 308(b) of the Act; engaged in abusive, contemptuous, and dilatory behavior prior to and after designation; and knowingly deceived the Bureau and Presiding Judge during discovery.

¹ Kay's assault on the integrity of the Bureau and its staff is also unjustified, unnecessary, and insulting.

4. Although styled as an opposition to the Bureau's Supplement, Kay's pleading is nothing more than a contrivance, designed to divert the Presiding Judge's attention away from an appropriate analysis of Kay's misconduct. The Bureau respectfully submits that Kay's latest pleading should be afforded no weight.

Respectfully submitted,
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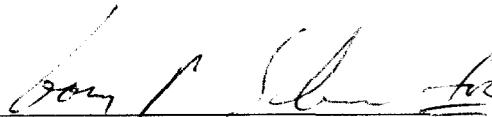
March 20, 1996

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 20th day of March 1996, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Reply" to:

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