

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

APR 12 1996

FEDERAL COMMUNICATIONS COMMISSION  
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: The Commission

**OPPOSITION TO  
WIRELESS TELECOMMUNICATIONS BUREAU'S MOTION TO DISMISS**

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

1. At the Bureau's request,<sup>1</sup> the Presiding Judge referred  
the issue of whether the Order to Show Cause, Hearing Designation  
Order and Notice of Opportunity for Hearing for Forfeiture, FCC  
94-147, released December 13, 1994 (the "HDO"), should be  
modified to delete twelve (12) licenses from the HDO (on the  
basis that Kay does not own any of these twelve (12) licenses) to  
the Commission.

2. In an effort to put the issue in the context of other  
events that have occurred subsequent to the issuance of the HDO,  
Kay submitted a Statement in Opposition to the Bureau's Request  
to Modify the Hearing Designation Order and Request for  
Commission Review of the Hearing Designation Order (the  
"Statement in Opposition") on March 29, 1996.

<sup>1</sup> See, Bureau's Request for Certification, filed on March  
6, 1996.

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3. The Bureau filed a Motion to Dismiss the Statement in Opposition on April 8, 1996.

4. In its Motion to Dismiss, the Bureau, as it has consistently done throughout this proceeding, did not challenge the allegations made by Kay and others in the Statement in Opposition. Instead, the Bureau sought to dismiss the Statement in Opposition as an unauthorized petition for reconsideration of the HDO.

5. The Statement in Opposition is in no respect a petition for reconsideration. On the contrary, the Statement in Opposition serves to demonstrate that the relief now being requested by the Bureau (i.e., delete twelve (12) licenses from the HDO) is another example of the absence of any factual or legal basis on the part of the Bureau in bringing this case. Since the Bureau has requested the Commission to modify the HDO, Kay is asking the Commission, sua sponte, to undertake a review of the propriety and bases for the Bureau's issuance of the HDO. We submit that sufficient cause exists both to do so and to dismiss the HDO.

6. The issue concerning modification of the HDO is before the Commission at the Bureau's request, not Kay's. But for the Bureau's request for the Commission to modify the HDO, which was made fifteen (15) months after the HDO was issued, the opportunity for the Commission to consider the issues raised by both Kay and the Bureau would be unavailable. It is inconsistent and, we submit, improper for the Bureau, on the one hand, to

request that the Commission modify the HDO, while arguing, on the other hand, that Kay cannot request that the Commission consider the Bureau's request to modify the HDO in the context of the blatant deficiencies in the Bureau's case, an argument that the Bureau has not even challenged.

WHEREFORE, for the reasons set forth herein, James A. Kay, Jr., requests that the Bureau's Motion to Dismiss be denied and that the Commission grant such other and further relief as is just and proper.

Respectfully submitted,

JAMES A. KAY, JR.

By: Bruce Aitken / SAF  
Bruce Aitken  
Martin J. Lewin  
Curtis Knauss

Aitken, Irvin, Lewin,  
Berlin, Vrooman & Cohn  
1709 N Street, N.W.  
Washington, D.C. 20036  
(202) 331-8045

By: Scott A. Fenske  
Barry A. Friedman  
Scott A. Fenske  
Lynn B. Taylor

Thompson Hine & Flory P.L.L.  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 331-8800

Dated: April 12, 1996

CERTIFICATE OF SERVICE

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

John I. Riffer, Esquire  
Assistant General Counsel  
Federal Communications Commission  
Room 610  
1919 M Street, N.W.  
Washington, D.C. 20554

Gary P. Schonman, Esquire  
Federal Communications Commission  
Hearing Branch  
Mass Media Bureau  
Suite 7212  
2025 M Street, N.W.  
Washington, D.C. 20554

and sent via first-class mail, postage prepaid on this 12th day of April, 1996 to:

W. Riley Hollingsworth, Esquire  
Deputy Associates Bureau Chief  
Wireless Telecommunications Bureau  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325-7245

  
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Scott A. Fenske

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