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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the matter of)
)
JAMES A. KAY, JR.)
)
Licensee of one hundred fifty-)
two Part 90 licenses in the)
Los Angeles, California area.)

WT Docket No. 94-147

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge
Richard L. Sippel

MOTION TO STAY PROCEEDINGS

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 1.43 of the Commission's Rules, requests that the Presiding Judge stay his ruling on the Wireless Telecommunications Bureau's ("Bureau") Motion for Summary Decision pending the Commission's ruling on Kay's Petition for Partial Reconsideration. In support thereof, Kay states as follows:

INTRODUCTION

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

2. In the HDO, the Commission sought to, inter alia, revoke one hundred sixty-four (164) licenses allegedly held by Kay.

3. One year later, on December 4, 1995, the Bureau filed a Motion for Summary Decision seeking to revoke, without any opportunity for Kay to defend himself, Kay's licenses and

OH

terminate the above-captioned proceeding based on Kay's alleged pre- and post-designation misconduct.

4. 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").

5. In the Motion, the Bureau sought to "clarify" its position in this case and only seek revocation of the licenses identified as Nos. 1-152, thereby omitting Nos. 153-164, in Appendix A of the HDO. According to the Bureau, License Nos. 153-164, "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."

6. On March 6, 1996, the Bureau filed a request for the Presiding Judge to certify the issue of whether the license of Multiple M and the eleven (11) licenses of Sobel be removed from the above-captioned proceeding due to the lack of evidence to establish the Kay owns or controls the twelve (12) licenses.

7. By Order, FCC 96M-35, released March 15, 1996, the Presiding Judge certified to the Commission, pursuant to Section 0.341(c) of the Commission's Rules, "the question of whether the one license held by Multiple M and the eleven licenses held by Marc Sobel that are specified in Appendix A to the Show Cause Order should be the subject of revocation in this case and/or

whether the licenses should be removed from the Show Cause Order."

8. On March 29, 1996, Kay filed a "Statement in Opposition to the Wireless Telecommunications Bureau's Request to Modify the Hearing Designation Order and Request for Commission Review of the Hearing Designation Order" (the "Statement"). In the Statement, Kay demonstrated that the relief requested by the Bureau was yet another example of the deficiencies in the Bureau's case against Kay and requested that the Commission, sua sponte, undertake a review of the propriety and bases for the issuance of the HDO and dismiss the HDO.

9. On April 8, 1996, the Bureau filed a Motion to Dismiss the Statement on the basis that the Statement was an unauthorized petition for reconsideration of the HDO.

10. In an Order, FCC 96-200, released May 8, 1996 (the "May Order"), the Commission deleted 12 Part 90 licenses from the HDO and dismissed the Statement as an unauthorized petition for reconsideration.

11. On May 24, 1996, Kay filed a Petition for Partial Reconsideration of the Commission's May Order. In the Petition for Partial Reconsideration, Kay requested that the Commission only reconsider that portion of its May Order pertaining to the dismissal of Kay's Statement as an unauthorized petition for reconsideration.

ARGUMENT

A. THE PRESIDING JUDGE MUST STAY THESE PROCEEDINGS PENDING THE COMMISSION'S RULING ON KAY'S PETITION FOR PARTIAL RECONSIDERATION SINCE THE RELIEF REQUESTED BY KAY, IF GRANTED, MAY DISPOSE OF ALL OR A PORTION OF THE HDO

12. Kay's Petition for Partial Reconsideration was premised on three (3) alleged errors in the Commission's May Order: (a) the Statement was not a petition for reconsideration because the Bureau, not Kay, sought a review of the HDO; (b) since the Bureau sought review of a portion of the HDO based on facts that the Bureau knew or should have known before the HDO was issued, Kay was entitled an opportunity to demonstrate that there is a reasonable basis for the Commission to review the entire HDO, not just the portions of the HDO selected by the Bureau; and (c) to the extent that the Commission considers the Statement a petition for reconsideration, the Statement fits within the exception set forth in Section 1.106(c)(i) of the Commission's Rules and should have been considered by the Commission.

13. In light of the arguments presented by Kay in the Petition for Reconsideration, the Commission has an opportunity to review its May Order.

14. If Kay's Petition for Partial Reconsideration is granted, the Commission may, among other things, review the propriety and bases for the issuance of the HDO and dismiss the HDO. As a result, a decision by the Presiding Judge on the Bureau's Motion for Summary Decision would be premature and may become either partially or totally moot if the Commission grants

the relief requested in both the Statement and the Petition for Partial Reconsideration.

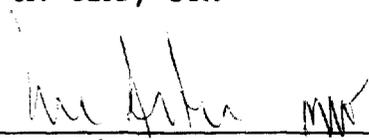
15. The Bureau will not be prejudiced by the brief delay requested herein, since the Bureau filed the Motion, the pleading upon which the Statement and subsequent pleadings to the Commission are based.

CONCLUSION

WHEREFORE, for the reasons set forth above, Kay requests requests that the Presiding Judge stay his ruling on the Wireless Telecommunications Bureau's Motion for Summary Decision pending the Commission's ruling on Kay's Petition for Partial Reconsideration and grant such other and further relief as is just and proper.

Respectfully submitted,

JAMES A. KAY, JR.

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Dated: May 31, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing James A. Kay Jr.'s Motion to Stay Proceedings was hand-delivered on this 31st day of May, 1996 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
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Gary P. Schonman, Esquire
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and sent via first-class mail, postage prepaid on this 31st day of May, 1996 to:

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