

Before the
Federal Communications Commission
Washington, D.C. 20554

WT Docket No. 94-147

In the Matter of

JAMES A. KAY, JR.

Licensee of one hundred sixty
four Part 90 Licenses in the
Los Angeles, California area.

ORDER

Adopted: May 1, 1996;

Released: May 8, 1996

By the Commission:

1. This order deletes 12 Part 90 licenses from the subject matter of this proceeding. The issue was certified to us by Administrative Law Judge Richard L. Sippel (ALJ). *James A. Kay, Jr.*, FCC 96M-35 (Mar. 15, 1996). This order also dismisses Kay's request that we reconsider the designation order in this proceeding.

I. BACKGROUND

2. On December 13, 1994, this proceeding was designated to determine whether James A. Kay, Jr. (Kay), a licensee of land mobile facilities under Part 90 of the Commission's rules, has complied with those rules and whether he possesses the character qualifications to remain a Commission licensee. *James A. Kay, Jr.*, 10 FCC Rcd 2062 (1994). Kay was ordered to show cause why his licenses should not be revoked or cancelled, why he should not be ordered to cease and desist from certain violations of the Communications Act, and why an order for forfeiture should not issue.

3. In an appendix, the hearing designation order specified 164 licenses as subject to this proceeding. 10 FCC Rcd at 2067-80. These included 147 facilities licensed to Kay personally, three facilities licensed to Buddy Corp., two facilities licensed to Oat Trunking Group, Inc., one facility licensed to Multiple M Enterprises, Inc. (Multiple M), and 11 facilities licensed to Marc Sobel (Sobel). The facilities not licensed to Kay personally were included because information indicated that Kay may have conducted business under a number of names. *Id.* at 2063 ¶ 3.

II. BUREAU'S MOTIONS

4. On December 4, 1995, the Wireless Telecommunications Bureau filed a Motion for Summary Decision and Order Revoking Licenses, which sought the revocation of all 164 licenses and the termination of this proceeding. Subsequently, on February 23, 1996, the Bureau supplemented its Motion to indicate that it sought the revocation only of those licenses in Kay's name and those

of Buddy Corp. and Oat Trunking Group, Inc., which are wholly owned and controlled by Kay. The Bureau explained that further proceedings would be necessary to determine whether the Multiple M and Sobel licenses were attributable to Kay.

5. Still later, on March 6, 1996, the Bureau filed a motion urging that the extent of the relationship between Kay and the Multiple M and Sobel licenses was unclear and should be explored initially in a nonadjudicatory investigation. The Bureau noted that Multiple M and Sobel had neither been made parties to this proceeding nor had issues specifically designated against them and requested that their 12 licenses should be deleted from this proceeding. Believing that the ALJ lacked the authority to modify the hearing designation order in this manner, the Bureau asked the ALJ to certify this matter to the Commission. The ALJ agreed with the Bureau's requests and certified this matter to us.

6. Kay, on March 29, 1996, filed a Statement in Opposition to Wireless Telecommunications Bureau's Request to Modify the Hearing Designation Order and Request for Commission Review of the Hearing Designation Order. Kay does not dispute the Bureau's contention that the facilities licensed to Multiple M and Sobel should be deleted from this proceeding. Rather, Kay argues that the Bureau's concession that the inclusion of the Multiple M and Sobel licenses was erroneous, together with other alleged defects, warrants Commission reconsideration of the designation order. On April 8, 1996, the Bureau filed a Motion to Dismiss Kay's request to review the hearing designation order, because it is contrary to 47 C.F.R. § 1.106(a)(1), which generally prohibits petitions for reconsideration of designation orders. Kay responds that he is simply asking for the Commission, in conjunction with the Bureau's motion to delete the 12 licenses, to undertake a review of the propriety and bases for the issuance of the hearing designation order. In this regard, he alleges that the complaints relied on in designating this proceeding for hearing are baseless and represent attempts by unscrupulous competitors to destroy his business.

III. DISCUSSION

7. Good cause having been shown, and no opposition having been received, we will delete the 12 facilities, as requested. Given the uncertain relationship between the licensees of the 12 facilities and Kay, there is no reason at this time to subject them to possible sanctions or to encumber this proceeding with their participation. If further investigation discloses pertinent questions concerning the 12 facilities, the Bureau may take further appropriate steps.

8. We will dismiss Kay's request inviting us to reconsider

the hearing designation order.¹ Under 47 C.F.R. § 1.106(a)(1), the Commission will reconsider a designation order only insofar as it relates to an adverse ruling with respect to petitioner's participation in the proceeding. Kay's pleading does not comply with the rule and it does not provide a basis for action here that would be in conflict with the rule.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED. That the Wireless Telecommunications Bureau's Motion to Dismiss, filed April 8, 1996, IS GRANTED, and the Statement in Opposition to Wireless Telecommunications Bureau's Request to Modify the Hearing Designation Order and Request for Commission Review of the Hearing Designation Order, filed March 29, 1996, by James A. Kay, Jr. IS DISMISSED as unauthorized.

10. IT IS FURTHER ORDERED, That, the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, 10 FCC Rcd 2062 (1994) IS MODIFIED to delete from this proceeding the facilities licensed to Multiple M Enterprises, Inc. and Marc Sobel, which are listed in 10 FCC Rcd at 2079-80 as items 153-64. The caption of this proceeding shall henceforth specify that James A. Kay, Jr. is the licensee of one hundred fifty two Part 90 Licensees in the Los Angeles, California area.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹ Kay erroneously states that the designation order was issued by the Bureau and requests Commission review of the order

The order, however, was actually issued by the Commission. Thus, Kay, in effect, requests reconsideration.