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

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In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred fifty two Part 90)
Licenses in the Los Angeles, California, Area)

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JAN 27 1997

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENT**

1. On January 17, 1997, James A. Kay, Jr. ("Kay"), filed a Motion for Leave to File Supplement to Consolidated Brief and Exceptions of James A. Kay, Jr. ("Motion"), accompanied by a Supplement to Consolidated Brief and Exceptions of James A. Kay, Jr. ("Supplement"). The Wireless Telecommunications Bureau hereby opposes Kay's Motion.

2. Kay seeks by the instant Supplement to establish that the Commission erred in designating this case for hearing. However, as will be demonstrated more fully below, the "informally gathered evidence" upon which Kay relies is entirely irrelevant to the matters under consideration by the Commission. Moreover, the Supplement is a thinly-veiled and patently defective petition for reconsideration of the Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability for Forfeiture, 10 FCC Rcd 2062 (1994) ("Show Cause Order"), in this proceeding. Kay has utterly failed to demonstrate any

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justification for interposing such a defective and frivolous supplemental pleading.

Accordingly, Kay's Motion should be denied, and his accompanying Supplement should be dismissed.

3. The Commission presently has before it for consideration the Summary Decision of Administrative Law Judge Richard L. Sippel, FCC 96D-02 (released May 31, 1996) ("Summary Decision"). Therein, the Presiding Judge resolved adversely to Kay the dispositive issue at ¶ 10(a) of the Show Cause Order relating to whether Kay had violated § 308(b) of the Communications Act of 1934, as amended. The Presiding Judge also found that Kay's continuing pattern of stonewalling during the discovery phase of this case constituted a "grave abuse" of the Commission's processes which further warranted Kay's disqualification as a Commission licensee. Summary Decision, at ¶ 35. The instant Supplement, however, does not address, challenge, or dispute either basis upon which the Presiding Judge disqualified Kay. Indeed, the Supplement makes no reference whatsoever to Kay's repeated refusals to respond, prior to commencement of the hearing, to multiple written requests for information about his stations, in clear violation of § 308(b) of the Act. Additionally, the Supplement is silent with respect to Kay's abuse of the Commission's discovery processes, including his flagrant noncompliance with a valid discovery order of the Presiding Judge. Rather, the Supplement is devoted to refuting the propriety of the Commission's seminal action more than two years ago designating this case for hearing, and proffering evidence concerning issues in the Show Cause Order that were not the subject of the Summary Decision. In sum, the Supplement advances arguments which are simply not germane to the Commission's consideration of the Summary Decision.

4. Kay's Supplement also is procedurally defective because it is, for all intents and purposes, an unauthorized petition for reconsideration of the Show Cause Order. Pursuant to § 1.106(a)(1) of the Commission's Rules, the Commission will reconsider a hearing designation order only insofar as it relates to an adverse ruling with respect to the petitioner's participation in the proceeding. Kay's supplemental pleading clearly does not comply with this rule section. Of course, Kay is -- or should be -- aware that he is precluded from seeking reconsideration of the Show Cause Order in this instance, having had a similar request for reconsideration dismissed by the Commission within the last year. See James A. Kay, Jr., 11 FCC Rcd 5324 (1996).¹

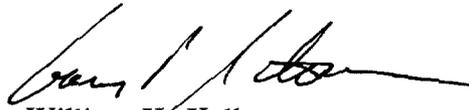
¹ At the very least, therefore, in addition to denying the Motion and dismissing the accompanying Supplement, the Commission should admonish Kay for knowingly interposing a repetitive and frivolous request under the pretense of "supplementing" another unrelated pleading.

5. Based on the foregoing, Kay's request for leave to file his Supplement should be denied, and his Supplement should, as a consequence, be dismissed.

Respectfully submitted,
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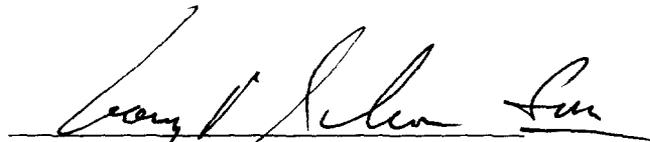
January 27, 1997

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 27th day of January 1997, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Motion to Dismiss" to:

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