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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 fifty two Part 90)
Licenses in the Los Angeles, California, Area)

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To: Administrative Law Judge
Richard L. Sippel

**WIRELESS TELECOMMUNICATIONS BUREAU'S REPLY
TO OPPOSITION TO MOTION TO ENLARGE ISSUES**

1. On March 31, 1997, James A. Kay, Jr. ("Kay") filed an Opposition to the Wireless Telecommunications Bureau's Motion to Enlarge Issues. The Bureau hereby submits its reply.

2. Kay's claim that the Bureau's motion is procedurally defective is unavailing. Good cause to consider the Bureau's motion on the merits exists. The Bureau filed its request to enlarge the scope of this proceeding within a reasonable period of time following the remand of this case to the Presiding Judge. The facts upon which the instant motion is predicated came into existence more than 15 days after Federal Register publication. Additionally, prior to the remand, the case was pending before the Commission on exceptions to the Presiding Judge's Summary Decision, 11 FCC Rcd 6585 (ALJ 1996). Had the Commission affirmed the Summary Decision and concluded that Kay was basically

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unqualified to be a licensee, the addition of further potentially disqualifying issues against Kay would have been superfluous. The Bureau further notes that addition of the requested issues will not disrupt the instant proceeding, given the fact that discovery has only recently resumed and the hearing is not scheduled to commence for several months. Moreover, and of paramount importance, the issues being sought by the Bureau involve questions of probable decisional significance. Indeed, they relate directly to Kay's character by inquiring into Kay's propensity to deal truthfully with the Commission and to comply fully with the Commission's processes, including an order of an FCC Administrative Law Judge. Thus, having shown good cause, the Bureau's motion should be considered on the merits.

3. The remainder of Kay's opposition pleading fails to eliminate the substantial and material question that exists as to whether Kay dissembled in his response to a Bureau interrogatory. Indeed, Kay's opposition is devoid of any reference to or adequate explanation of his deceptive "answer" to Interrogatory No. 4, in which Kay directed the Bureau to documents that Kay knew at the time did not contain the information which the Bureau was seeking. Nor does Kay dispel the need to inquire fully into his failure to comply with a valid discovery order issued by the Presiding Judge. In this regard, despite a direct order from the Presiding Judge requiring Kay to compile and produce certain information that the Presiding Judge deemed relevant to this proceeding, Kay appears to suggest that he was obliged to produce the information only if a specific Commission rule or policy had first required him to maintain the information and then only if Kay had in fact actually maintained the information. The Bureau submits that Kay's distorted interpretation of his responsibilities as a party/licensee raises serious questions indeed concerning his basic character qualifications.

Furthermore, Kay's steadfast unwillingness to comply with the Presiding Judge's order constitute *prima facie* evidence of an abuse of the Commission's processes.

4. These substantial and material questions of fact raised by the Bureau should be placed in issue so that Kay will have a full and complete opportunity to explain his actions, and the Presiding Judge and Commission will have the occasion to rule on them. Addition of the requested issues also will afford Kay due notice of possible procedural consequences flowing from his actions. Section 1.323(d) of the Commission's Rules. Accordingly, the issues, as requested, should be added.

Respectfully submitted,
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April 7, 1997

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 7th day of April 1997, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Reply to Opposition to Motion to Enlarge Issues" to:

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