

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
JAMES A. KAY, JR.) WT DOCKET NO. 94-147
)
)
Licensee of 152 Part 90 Stations in the)
Los Angeles, California Area)

To: Honorable Richard L. Sippel
Administrative Law Judge

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WIRELESS TELECOMMUNICATIONS
BUREAU'S OPPOSITION TO MOTION
FOR PROTECTIVE ORDER

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now opposes the "Motion for Protective Order" filed by James A. Kay, Jr. (Kay) on January 2, 1998.

2. Kay asks the Presiding Judge to rule that Roy Jensen, one of the Bureau's potential witnesses, be forever banned as a witness in this proceeding because he cannot currently be located. Kay's motion is premature and should be denied. While Kay should have the opportunity to depose Jensen if Jensen will testify at trial, the Bureau is still attempting to locate Mr. Jensen, and the trial in this case is not scheduled to start for over four months. The Bureau's attempts to locate Mr. Jensen are continuing, and time remains for Mr. Jensen to be located and deposed.

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3. Kay is correct that the Bureau has not yet been able to locate Mr. Jensen. The United States Postal Service provided the Commission with the same South Tower Drive address that the Bureau provided to Kay. The Post Office did inform the Bureau that Mr. Jensen had two Post Office Boxes which were currently receiving mail. The Bureau has sent Mr. Jensen letters asking that he contact the Bureau. The Bureau has also served a subpoena upon Pacific Bell seeking information concerning Mr. Jensen's old telephone number. The Bureau is awaiting a response from Pacific Bell. The Bureau is therefore hopeful that Mr. Jensen may be located and served with an appropriate subpoena.

4. While Kay claims that now is the time to rule that Mr. Jensen is forever excluded from being a witness, he provides no cogent reason for making such a ruling now. If the Bureau or Kay locates Mr. Jensen in time to have him deposed during one of the deposition sessions in California, Kay would suffer no prejudice from allowing Mr. Jensen to be a witness. The time may come for the Presiding Judge to rule that the Bureau may not use Mr. Jensen as a witness, but that time has not yet arrived. Moreover, if the Bureau decides that the search for Mr. Jensen has become futile and that it will not be using him as a witness, it will promptly notify Kay and the Presiding Judge.

Accordingly, the Bureau asks the Presiding Judge to deny Kay's "Motion for Protective Order."

Respectfully submitted,
Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau



Gary P. Schonman
Chief, Compliance and Litigation Branch
Enforcement and Consumer Information Division



William H. Knowles-Kellett
John J. Schauble
Attorneys, Wireless Telecommunications Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 8308
Washington, D.C. 20554
(202) 418-0569

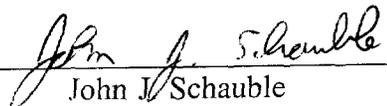
January 12, 1998

CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 12th day of January, 1998 sent by the method indicated, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Motion for Protective Order" to:

Barry A. Friedman, Esq.
Thompson, Hine & Flory
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(Counsel for James A. Kay, Jr.)
(Via Facsimile and Mail)

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
2000 L Street, N.W.
Second Floor
Washington, D.C. 20554
(Via Hand Delivery)



John J. Schauble