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

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.)

To: The Honorable Richard L. Sippel

**MOTION FOR EXTENSION OF TIME
AND REQUEST FOR BILL OF PARTICULARS**

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 1.205 of the Commission's Rules, hereby requests an extension of time to identify his rebuttal witnesses and further requests that the Wireless Telecommunications Bureau ("Bureau") submit a Bill of Particulars describing in detail the alleged violation of Commission rules and regulations that it intends to pursue against Kay at trial. In support thereof, Kay states as follows:

1. In his Order, 98M-22, released February 26, 1998, the Presiding Judge directed Kay to identify his rebuttal witnesses on or before March 6, 1998.
2. As noted in Kay's February, 1998 Status Report (submitted on February 13, 1998):

Now that the deposition of the Bureau's witnesses has nearly been completed, the Bureau should also be prepared to advise Kay and the Presiding Judge if it intends to proceed on all issues contained in the Hearing Designation Order or to narrow them based on the evidence it has to date. From the course of the depositions, Kay is unable to discern what, if any, charges the Bureau intends to pursue or waive. It is now time for the Bureau to provide all parties with a statement as to how it intends to proceed. If the Bureau is unwilling to immediately undertake this action or if the Presiding

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Judge will not order the Bureau to do so, Kay intends to request permission to file additional interrogatories so as to narrow the issues and provide a basis upon which to ask for partial summary judgment. Any delay in this action will also make it difficult, if not impossible, for Kay to accurately identify his witnesses.

Kay has made this same request previously in numerous other pleadings and prehearing conferences.

3. Since the Bureau did not voluntarily narrow the issues contained in the Hearing Designation Order, Kay, on February 23, 1998, submitted a set of interrogatories to the Bureau. These interrogatories are relevant not only to Kay's preparation of his defenses, but also to the accurate identification of his rebuttal witnesses. According to Kay's calculation, the Bureau's answers and/or objections to his interrogatories are due on March 9, 1998.

4. Since Kay does not know exactly which issues the Bureau intends to pursue at trial¹ (and the evidence to support such issue), he is unable to identify, with any specificity, his rebuttal witnesses. As a result, Kay requests an extension of time to identify his rebuttal witnesses.

5. The length of time sought for the extension of time requested herein and a determination of whether Kay's request for a Bill of Particulars (contained herein) may ultimately be moot depends on many variables. For example, if the Bureau candidly answers Kay's interrogatories on or before March 9, 1998, Kay could file his preliminary list of rebuttal

¹ The Bureau's argument that it may be in a position to narrow the issues following the identification of Kay's rebuttal witnesses is meritless since the Bureau has the burden of proceeding on the issues set forth in the Hearing Designation Order. Kay's identification of witnesses (to the extent it is possible for him to do so) has no bearing on the Bureau's ability or inability to meet this burden.

witnesses on March 13, 1998.² If the Bureau objects to or otherwise refuses to answer Kay's interrogatories and the objection is overruled, then Kay could file his preliminary list of rebuttal witnesses approximately one week after his receipt of the Bureau's answers to his interrogatories. Finally, if the Bureau objects to Kay's interrogatories and the objection is sustained, then Kay requests that the Presiding Judge order the Bureau to file a Bill of Particulars.

6. To the extent the Presiding Judge orders the Bureau to file a Bill of Particulars, the Bill of Particulars should include detailed facts concerning each alleged violation of the Commission rules and regulations that the Bureau intends to pursue at trial, including, without limitation, the nature of the alleged violation, including an identification of the specific rule or regulation that Kay allegedly violated; when and where the alleged violation occurred; and the name or names of those individuals who have personal knowledge of the alleged violation. Kay submits that this information should now be readily available to the Bureau, the party with the burden of proceeding on the designated issues,³ and is necessary to prevent Kay from having to guess as to which specific alleged violations the Bureau intends to pursue against him at trial.

WHEREFORE, for the reasons set forth herein, Kay requests that the time in which to submit his preliminary list of rebuttal witnesses be extended and, to the extent necessary (pending the receipt of the Bureau's answers and/or objections to Kay's interrogatories), that the

² Kay submits that if the Bureau timely and candidly answers his recently submitted interrogatories, his request for a Bill of Particulars (contained herein) may be moot.

³ To the extent the Bureau contends that Kay obtained much of this information during depositions, the Bureau's position is wide of the mark. Deposition discovery allows parties to determine a witnesses' specific knowledge, not to determine what alleged rule violations the prosecutor (the Bureau) intends to pursue at trial.

Presiding Judge order the Bureau to file a detailed Bill of Particulars with respect to each alleged violation of the Commission's rules and regulations that it intends to pursue at trial.

Respectfully submitted,

JAMES A. KAY, JR.

By: _____

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CERTIFICATE OF SERVICE

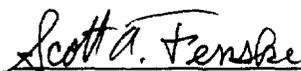
I hereby certify that a true and correct copy of the foregoing Motion for Extension of Time and Request for Bill of Particulars was hand-delivered on this 3rd day of March, 1998 to the following:

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554

John J. Schauble, Esquire
Federal Communications Commission
Wireless Telecommunications Bureau
Suite 8308
2025 M Street, N.W.
Washington, D.C. 20554

and sent via first-class mail, postage prepaid on this 3rd day of March, 1998 to:

William H. Knowles-Kellett, Esquire
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245



Scott A. Fenske