

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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)

RECEIVED

MAR 12 1998

To: Honorable Richard L. Sippel
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WIRELESS TELECOMMUNICATIONS BUREAU'S
MARCH 12, 1998 STATUS REPORT

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now submits this report on the status of this proceeding as requested by the Presiding Judge in Order, FCC 98M-22 (released February 26, 1998).

2. Since the filing of the last status report, the Presiding Judge has vacated the procedural dates and ordered the parties to come up with new procedural dates. On March 5, 1998, the Bureau sent a letter to counsel for Kay (with a copy to the Presiding Judge) proposing a new procedural schedule. Unfortunately, the Bureau's was rejected by Kay's counsel because Mr. Friedman (Kay's lead counsel) has scheduled and paid for an international vacation trip from August 15-30. See the attached letter dated March 10, 1998 from Kay's counsel to Bureau counsel. Subject to the Presiding Judge's approval, the parties have agreed to the following revised procedural schedule:

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1. Week of April 6-10 - Deposition of Bureau Expert in Washington
2. Mid-April (possibly starting April 13 or 14): Depositions of Roy Jensen and Kay witnesses in Los Angeles area.

4. May 22 - Close of Discovery
5. June 12 - Bureau submits direct case
6. June 22 - Kay submits direct case
7. July 29 - Parties submit Trial Briefs and Trial Subpoenas
8. August 4-5 - Admissions Session
9. September 2 - Washington Hearing begins
10. September 14-25 - Los Angeles Hearing

3. The Bureau has asked counsel for Kay to check the schedules of his expert witnesses to determine when they will be available for deposition. Counsel for Kay has taken the position that the deposition of the expert in California should be taken in California, not in Washington.

4. The Bureau recognizes that this schedule does not finish the Los Angeles portion of the hearing by September 4, as the Presiding Judge had desired. Unfortunately, the Bureau does not see any realistic means of holding the trial in July or August. Kay's counsel, Mr. Fenske, will be on paternity leave on or about July 3, and Bureau counsel, Mr. Knowles-Kellett, will be on paternity leave on or about July 14. The Bureau believes this case will be sufficiently complex to require their participation. The Bureau estimates that the Washington

portion of the hearing will last approximately one week. Given the number of witnesses that Kay has listed as potential witnesses, it is difficult at this time to accurately estimate the length of the Los Angeles portion of the hearing, but the proposed schedule provides for two weeks of hearings in Los Angeles. It may also be necessary to hold a second hearing session in Washington after the Los Angeles hearing.

5. The Bureau is actively reviewing the witness list provided by Kay to determine which of those witnesses will be called for depositions. Given the number of witnesses, the Bureau asks that the time to work out and to file a deposition schedule be extended from Monday, March 16, to Wednesday, March 18, and that the Bureau be given until Monday, March 23 to file deposition notices and subpoena requests.

6. The following matters are pending before the Presiding Judge: (1) pleadings relating to Kay's proposed depositions of Riley Hollingsworth, Anne Marie Wypijewski, Terry Fishel, and Robert Andary; (2) Kay's "Petition for Leave to File Appeal" dated March 2, 1998 concerning where Marc Sobel and Craig Sobel will testify; and (3) the Bureau's March 4, 1998 "Further Motion to Compel Production of Documents."¹ Also, Kay served interrogatories on the Bureau on February 23, 1998, and the Bureau served Kay with

¹ Kay has received an extension of time until March 20, 1998 to respond to this motion. Order, FCC 98M-29 (released March 12, 1998). Based upon the representations in Kay's extension request, there may not be any issues the Presiding Judge will have to resolve.

objections on March 9, 1998. Kay has until March 16, 1998 to file a motion to compel answers to those interrogatories.

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
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(202) 418-0569

March 12, 1998

**THOMPSON
HINE & FLORY LLP**

Attorneys at Law

March 10, 1998

VIA FACSIMILE

John T. Schauble, Esquire
Enforcement and Consumer Information Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Suite 8308
Washington, D.C. 20554-0002

Re: James A. Kay, Jr., WT Docket No. 94-147

Dear John:

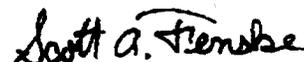
Thank you for your March 5, 1998 letter concerning scheduling in the above-referenced matter.

Unfortunately the schedule that you have proposed is unworkable since Barry Friedman has previously scheduled a two week overseas vacation beginning on August 15 and ending on August 30, 1998. This vacation was planned months ago and airline tickets have already been purchased. Given Bill's and my schedule, we believe that it is impossible to complete the trial before August 15, 1998.

Under these circumstances, we would like to discuss new procedural dates with you and Bill either today or tomorrow. Our options appear simple: either keep the dates that you proposed and begin the admission session and the hearing in early September or modify the entire schedule slightly.

Please call me at your earliest convenience.

Very truly yours,


Scott A. Fenske

cc: James A. Kay, Jr.
Barry A. Friedman, Esquire

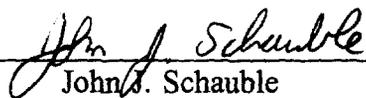
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CERTIFICATE OF SERVICE

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 March, 1998, sent by the method indicated, copies of the foregoing, "Wireless Telecommunications Bureau's March 12 Status Report" 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
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(Via Hand Delivery)



John J. Schauble