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MAY - 7 1998

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the matter of

**CORRESPONDENCE**  
~~DO NOT FILE IN ORIGINAL~~

JAMES A. KAY, JR.

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WT Docket No. 94-147

Licensee of one hundred fifty two Part 90  
licenses in the Los Angeles, California area

To: The Honorable Richard L. Sippel  
Presiding Administrative Law Judge

**ERRATA TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES**

James A. Kay, Jr. ("Kay"), by his attorneys, hereby submits the following errata to his  
Motion to Compel Answers to Interrogatories filed yesterday, Wednesday, May 06, 1998:

- (a) On page 4, at paragraph 7, line three, change the word "weight" to "weigh";
- (b) On page 5, in footnote 7, line ten, change the word "*Consolidate*" to "*Consolidated*";
- (c) On page 6, at paragraph 9, third line of the block quote, change the phrase "inspect for copy" to "inspect or copy";
- (d) On page 7, at paragraph 12, last line, change the phrase "disingenuous entirely" to "disingenuous and entirely";
- (e) On page 8, at paragraph 13, last line, change "Kay Below" to "Kay below";
- (f) On page 12, at paragraph 24, first line, change "Here" to "He";
- (g) On page 14, the Certificate of Service, correct the title of the pleading; and
- (h) Add Attachment Nos. 1 through 3 that were inadvertently omitted.

For the convenience of the Presiding Judge and the Bureau, a completely revised copy of the pleading, incorporating these errata, is attached. No other changes have been made.

Respectfully submitted this 7th day of May, 1998

JAMES A. KAY, JR.

By: 

No. of Copies rec'd 076  
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**CERTIFICATE OF SERVICE**

I, Robert J. Keller, counsel for James A. Kay, Jr., hereby certify that on this 7<sup>th</sup> day of May, 1998, I caused copies of the foregoing **ERRATA TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES** to be sent, first class U.S. mail, postage prepaid, except as otherwise indicated below, to the officials and parties in WT Docket No. 97-56, as follows:

HON RICHARD L SIPPEL  
ADMINSTRATIVE LAW JUDGE  
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A handwritten signature in cursive script that reads "Robert J. Keller". The signature is written in black ink and is positioned above a solid horizontal line.

Robert J. Keller

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Federal Communications Commission  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of )  
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JAMES A. KAY, JR. )  
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Licensee of one hundred fifty two Part 90 )  
licenses in the Los Angeles, California area )

WT Docket No. 94-147

To: The Honorable Richard L. Sippel  
Presiding Administrative Law Judge

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES**

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 1.323(c) of the Commission's Rules and Regulations, 47 C.F.R. § 1.323(c), hereby respectfully moves the Presiding Judge to compel the Wireless Telecommunications Bureau ("Bureau") to answer the *Further Written Interrogatories* served by Kay on April 14, 1998.<sup>1</sup>

1. On April 14, 1998, Kay served his *Further Written Interrogatories* on the Bureau. A copy thereof is appended hereto as Attachment No. 1. On April 28, 1998, the Bureau served its *Objections to Kay's Interrogatories* wherein it refuses to answer any of the interrogatories propounded by Kay. A copy thereof is appended hereto as Attachment No. 2. The Bureau asserts generally that the interrogatories were propounded in violation of the Presiding Judge's *Order*, FCC 95M-28 (released February 1, 1995). In addition the Bureau offered specific objections to Interrogatory Nos. 7 through 12.

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<sup>1</sup> To the extent applicable, Kay respectfully requests a waiver of Sections 1.49(b) and 1.49(c) of the Rules, 47 C.F.R. § 1.49(b)-(c), to permit the acceptance and filing of this pleading without a table of contents and summary. The pleading exceeds ten pages in length only because of extensive quoting of the subject interrogatories and objections for the convenience of the Presiding Judge. No value would be added by including a table of contents and summary, and the waiver is therefore justified.

A. The Bureau's General Objection

2. The Bureau asserts generally that the interrogatories were propounded in violation of the Presiding Judge's *Order*, FCC 95M-28 (released February 1, 1995). In that order, which is more than three years old, the Presiding Judge authorized Kay to ask ten interrogatories on each of issue designated in the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* ("HDO"), 10 FCC Rcd 2062 (1994). The following issues were specified in the *HDO*:

- a) To determine whether James A. Kay, Jr. has violated Section 308(b) of the Act<sup>7</sup> and/or Section 1.17 of the Commission's Rules, by failing to provide information requested in his responses to Commission inquiries;
- b) To determine whether James A. Kay, Jr. has willfully or repeatedly operated a conventional station in the trunked mode in violation of Section 90.113 of the Commission's Rules;
- c) To determine if Kay has willfully or repeatedly violated any of the Commission's construction and operation requirements in violation of Sections 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules;
- d) To determine whether James A. Kay, Jr. has abused the Commission's processes by filing applications in multiple names in order to avoid compliance with the Commission's channel sharing and recovery provisions in violation of Sections 90.623 and 90.629;
- e) To determine whether James A. Kay, Jr. willfully or maliciously interfered with the radio communications of other systems, in violation of Sections 333 of the Act;
- f) To determine whether James A. Kay, Jr. has abused the Commission's processes in order to obtain cancellation of other licenses;
- g) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether James A. Kay, Jr. is qualified to remain a Commission licensee;
- h) To determine if any of James A. Kay, Jr.'s licenses have automatically cancelled as a result of violations listed in subparagraph (c) pursuant to Sections 90.155, 90.157, 90.631 or 90.633 of the Commission's rules ....

*HDO* at ¶ 10 (footnotes omitted).

3. The *HDO* sets forth the alleged factual predicate with respect to issue (a), and issues (g) and (h) of course are legal conclusions to be drawn based on the evidence presented on the preceding issues.<sup>2</sup> But nowhere in the *HDO* or elsewhere has the Commission or the Bureau provided Kay with even a specific factual allegation, much less a single shred of factual evidence, indicating the basis for issues (b) through (f). It has now been nearly three and one-half years since the case has been designated. Discovery is to close in less than two weeks. Kay is being called on to present his direct case a little more than two months from now, at which time he will have had the benefit of access to the Bureau's direct case exhibits for a mere week's time. And still, the Bureau steadfastly refuses to tell Kay what specifically it is he is alleged to have done that constitutes the violations asserted in issues (b) through (f).<sup>3</sup>

4. This proceeding was admittedly designated without any evidence whatsoever to support issues (b) through (f). Attachment No. 3 hereto is a copy of the September 15, 1994 memorandum from W. Riley Hollingsworth, then Deputy Chief, Licensing Division, of the Private Radio Bureau, to Ralph A. Haller, the Chief of the Private Radio Bureau, proposing that license revocation proceedings be initiated against Kay. It will be noted that the draft order accompanying the memorandum is identical to the *HDO* that was ultimately adopted by the Commission only three and one-half months later.

5. The primary justification for designation offered by Mr. Hollingsworth in his memorandum was Kay's alleged failure to provide information requested by the Bureau, *i.e.*, the so-called Section 308(b) issue. As to that issue, Mr. Hollingsworth's memorandum, his draft

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<sup>2</sup> If the Bureau and/or Presiding Judge interprets issue (h) as a separate and independent *factual* issue, Kay's concerns expressed herein regarding insufficient notice and opportunity to prepare a defense apply equally to it.

<sup>3</sup> Those charged with traffic violations are give more consideration. A speeding ticket at least indicates the date and location of the alleged infraction and indicates the speed the driver is alleged to have gone. A parking ticket left under the windshield wiper clearly states the date, time, and location of the alleged infraction.

designation order, and the *HDO* as ultimately adopted set forth specific factual allegations of what Kay is alleged to have done or not done to warrant the accusation. No such factual allegations are offered in support of the other issues.

6. Mr. Hollingsworth admits in his memorandum that the Bureau did not have specific factual information justifying the designation of issues (b) through (f). He instead proposed to have the Commission designate the case for hearing and then exploit the discovery process in an attempt to obtain information regarding those issues. Thus, Mr. Hollingsworth wrote:

*We have confidence that discovery will reveal that not all of Kay's stations are constructed, and that he exaggerates his loading to avoid the consequences of our channel sharing and channel recovery provisions. We include in the draft order miscellaneous allegations including possible misuse of Commission forms. These are based on various reports received from licensees.*

Attachment No. 3 at p. 2 (emphasis added).

7. By the Bureau's own admission, therefore, discovery on issues (b) through (f) was, from its inception, intended as a fishing expedition. The Bureau has now had more than three years to angle for evidence. It is high time that the Bureau be directed to measure and weigh its catch. The fish that are not of legal size should be thrown back. If there are any "keepers," Kay is entitled to know about them sufficiently in advance of hearing to be able to adequately prepare his defense. It is too late to prevent clear violations of the Communications Act,<sup>4</sup> the Administrative

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<sup>4</sup> Section 312(c) of the Communications Act of 1934, as amended, provides that an "order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee ... to appear before the Commission ... and give evidence upon the matter." 47 U.S.C. § 312(c). As to issues (b) through (f), the *HDO* does not provide Kay with a sufficient statement of the matter to permit him to know what evidence he might give.

Procedure Act,<sup>5</sup> and the United States Constitution,<sup>6</sup> but that is no excuse for the Presiding Judge not to do what he can to mitigate what is already a blatantly unlawful and unconstitutional situation.

8. There are serious statutory and due process issues attendant to Kay's inability to learn *any* specifics regarding most of the charges against him. If the 1995 order indeed limits Kay's interrogatory discovery to responses that are now more than three years old and which have been demonstrably shown to be incomplete, inaccurate, and/or patently false,<sup>7</sup> it is respectfully requested that the order be modified or the limitation waived.

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<sup>5</sup> Section 5(a) of the Administrative Procedure Act provides: "Persons entitled to notice of an agency hearing shall be timely informed of ... the matters of fact and law asserted." 5 U.S.C. § 554(b)(3). The *HDO* does not inform Kay of the matters of fact asserted with regard to issues (b) through (f).

<sup>6</sup> The revocation of all of Kay's licenses is synonymous with the elimination of his livelihood. As such, this proceeding looks toward a "taking" of Kay's property, subject to the protection of the due process clause of the Fifth Amendment of the Constitution. U.S. CONST. amend. V. To force Kay into a star chamber proceeding, in which his licenses and livelihood are at stake, without timely notifying him of specific factual allegations warranting such action, is clearly a deprivation of "due process of law."

<sup>7</sup> In numerous instances Kay has determined that the responses provided by the Bureau are not accurate. The Bureau listed individuals who it swore under oath had knowledge of the factual specifics of the violations asserted in one or more of issues (b) through (f). After extensive discovery, however, Kay has yet to learn any such specifics. In many instances the individuals named by the Bureau have denied, under oath, having any such knowledge. In some cases it has even been demonstrated conclusively that the individuals have provided false and/or perjured statements to the Bureau. *See, e.g., Revised Request for Inquiry and Investigation* (submitted March 2, 1998, in WT Docket No. 97-56) and *Reply to Opposition* (submitted March 23, 1998, in WT Docket No. 97-56), and *Kay's Response to Wireless Telecommunications Bureau's Consolidated Opposition to Notices of Deposition and Motion for Protective Order* (submitted in this proceeding on February 27, 1998, and the supplement thereto submitted on March 3, 1998). Yet, the Bureau has never modified or supplemented any of its interrogatory answers. Thus, even though the Bureau knows full well that its prior interrogatory responses are incomplete, inaccurate, and in many instances downright false, it nonetheless unabashedly cites them as justification for denying Kay any additional interrogatories. Such a posture exhibits bad faith as well as an utter disregard, indeed even a direct assault, on Kay's due process rights.

B. Interrogatory No. 7

9. The Interrogatory asked:

Identify each person, save and except Commission employees, whom the Bureau, from January 1991 to December 31, 1994: (a) communicated with concerning investigation of Kay; and/or (b) permitted to inspect or copy documents submitted to the Commission by Kay. As to each such person, state the date, time, participants, and nature of each such communication, and identify each such document and state the date and place of such inspection or copying, and the purpose of such inspection or copying.

Kay Below addresses each part of the Bureau's objection, seriatim.

- (a) "The Bureau objects to this interrogatory to the extent that it would require the disclosure of the identity of confidential informants."

10. Assuming, *arguendo*, the applicability of an "informant's privilege" to any of the requested information, the Bureau should nonetheless be required to provide such portion of the requested information as does not transgress the privilege, and should further be required to provide specific information sufficient to justify the claimed privilege. A mere assertion that there may be a privilege without any specifics and without any information as to whether there is responsive information is inadequate. Moreover, on information and belief (and, in some cases on actual knowledge) most of the information responsive to this request involves competitors of Kay and/or matters involving contested proceedings before the Commission at the time. Neither Kay's competitors nor the Bureau staff should be permitted to side-step the Commission's *ex parte* regulations by simply making a generalized and unsupported claim of informer's privilege. It is respectfully submitted that any such privilege should not be applicable to communications that would otherwise be subject to the *ex parte* regulations or which, even in the absence of strict *ex parte* applicability, should be disclosed to an adverse party in the interests of due process and procedural fairness.

- (b) "The interrogatory is also overly broad because it requires the disclosure of individuals other than those who have personal knowledge of fact pertinent to the issues in this proceeding."

11. Kay is not limited to seeking "the disclosure of individuals other than those who have personal knowledge of fact pertinent to the issues in this proceeding." It is sufficient that the interrogatory is reasonably calculated to lead to the discovery of admissible evidence, and the request propounded by Kay satisfies that standard.

- (c) "Finally, the interrogatory is largely repetitive because the Bureau has disclosed an extensive number of communications with individuals in response to Kay's first set of interrogatories."

12. The Bureau's assertion that it has previously provided responsive information belies its assertion that the request is objectionable. Moreover, it is not up to the Bureau to selectively determine what portion of the responsive information it will produce to Kay. Kay requests the identity of "each" person and "each" communication. This is an adversarial proceeding, and Kay is unwilling to accept the Bureau's unilateral determination that its selective disclosure of "an extensive number of communications with individuals" is adequately responsive. Assuming for the sake of argument that the current interrogatory is duplicative of one or more earlier requests, the Bureau's responses are three years old and have, in many instances, been demonstrated to be false, inaccurate, and/or incomplete. For the Bureau, knowing this, to hide behind those responses, is disingenuous and entirely improper. *See also* footnote 6, *supra*.

C. Interrogatory No. 8

13. The Interrogatory asked:

Identify each person now known by the Bureau to have information concerning any allegations that Kay: (a) operated a conventional station in the trunked mode; (b) violated any of the Commission's applicable construction requirements; (c) violated any of the Commission's applicable channel loading requirements; (d) violated any of the Commission's channel sharing requirements; (e) violated any of the Commission's channel recovery requirements; (f) abused the Commission's processes by filing applications in

multiple names; (g) abused the Commission's processes in order to obtain cancellation of other licenses; or (h) maliciously interfered with the radio communications of other systems. As to each such person, state specifically which of the above subsections (a) through (h) the person's knowledge concerns.

Kay below addresses each part of the Bureau's objection, *seriatim*.

(a) "The Bureau objects to this interrogatory as repetitive. See the Bureau's Response to Interrogatories 2-7, 2-8, 3-1, 4-1, and 5-1."

14. *See* paragraph 12, *supra*. Moreover, this interrogatory is not the same as the ones to which the Bureau has previously responded. First, it expressly asks for information *now* known to the Bureau. Moreover, it specifically asks for information in specific subparts relating to each separate aspect of each alleged violation. Given the uselessness and oftentimes inaccuracy and falseness of the Bureau's previous responses, this is not an unreasonable request.

(b) "Also, the Bureau intends to file a pleading after the close of discovery informing the Presiding Judge and Kay of the issues which it intends to go forward on and the specific incidents on which it will offer evidence at trial. Under those circumstances, no purpose will be served by requiring the Bureau to answer this repetitive interrogatory."

15. To withhold the information until after the close of discovery deprives Kay of being able to know the specific factual basis of the charges against him and to then conduct his own discovery thereupon. Just because the Bureau chose to embark upon this proceeding by using discovery as an open ended fishing expedition does not entitle it to impose that mode of behavior as a procedural requirement on Kay. This is patently unfair and is at odds with numerous statutory and Constitutional requirements. *See* paragraph 7 and footnotes 3 - 5, *supra*.

D. Interrogatory No. 9

16. The Interrogatory asked:

Identify each document in the Bureau's possession concerning any allegations that Kay: (a) operated a conventional station in the trunked mode; (b) violated any of the Commission's applicable construction requirements; (c) violated any of the Commission's applicable channel loading requirements; (d) violated any of the Commission's channel sharing requirements; (e) violated any of the Commission's channel recovery requirements; (f)

abused the Commission's processes by filing applications in multiple names; (g) abused the Commission's processes in order to obtain cancellation of other licenses; or (h) maliciously interfered with the radio communications of other systems. As to each such person, state specifically which of the above subsections (a) through (h) the document concerns.

Kay Below addresses each part of the Bureau's objection, seriatim.

- (a) "The Bureau objects to this interrogatory as unduly burdensome. The Bureau has produced over 8,000 pages of documents to Kay, and Kay has produced almost 40,000 pages of documents to the Bureau. Kay's request that the Bureau index each document which is in Kay's possession would be an enormous burden on the Bureau's limited resources and would serve no useful purpose."

17. First, it is the documents in the *Bureau's* possession, not Kay's, to which this request applies. Second, it is precisely because of the volume of documents involved that Kay is entitled to know which, if any, such documents the Bureau believes incriminate Kay on *HDO* issues (b) through (f). If the Bureau had heretofore provided at least some specifics as to the factual basis for the legal violations alleged in those issues, Kay would perhaps be able to ascertain this for himself. But once again Kay is forced to be an unwilling companion on the Bureau's unlawful and unconstitutional fishing trip. The Bureau seeks to destroy the business Kay has built up over the better part of three decades, to eliminate the jobs Kay provides to several employees, and to deprive the Los Angeles 800 MHz dispatch community of competitive choice--not to mention the destruction of Kay's livelihood. The assertion that it is an "enormous burden on the Bureau's limited resources" to advise Kay of the factual predicate for such drastic measures is absurd on its face--and the claim that this "would serve no useful purpose" demonstrates just how dispensable the Bureau believes Kay's due process rights to be.

- (b) "The Bureau also objects to this interrogatory to the extent the interrogatory would require disclosure of the identity of confidential informants."

18. See paragraph 10, above. Moreover, this portion of the objection is inconsistent with the first part. The Bureau first objects that it has produced voluminous documents to Kay,

making the request too burdensome, but it now implies (admits?) that there are other responsive documents *not* produced to Kay. The blind, blanket assertion of informer's privilege is insufficient for all of the reasons set forth in paragraph 10, *supra*. At a minimum Kay is entitled to know (a) whether any such documents exist, (b) such responsive information concerning such documents as would not disclose the identities of informants, and (c) the justification for the claim of informer's privilege (especially in light of the potential applicability of the *ex parte* rules.)

E. Interrogatory Nos. 10 and 11

19. The Interrogatories asked:

Identify each person who has provided the Bureau with information regarding Kay who is also party to a contested matter before the Commission involving Kay. For purposes of this interrogatory and Interrogatory Nos. 11 and 12, below, the "contested matter before the Commission involving Kay" does not include WT Docket No. 94-147, but it does include other contested matters whether or not the issues are the same or similar to some of the issues in WT Docket No. 94-147.

As to each person identified in response to Interrogatory No. 10, above, identify each such communication and state whether the communication concerns in any way the issues involved in any such contested matter.

Kay Below addresses each part of the Bureau's objection, seriatim.

- (a) "The Bureau objects to this interrogatory because it is over broad, duplicative, and not calculated to lead to the discovery of admissible evidence. The phrase "information regarding Kay" encompasses information which has no bearing on the issues designated in this proceeding. Kay is involved in other "contested proceedings" which have no relevance to the disposition of this proceeding. The merits of those other proceedings should not be litigated in this proceeding."

20. First, many of the parties to such other proceedings are the very complainants, informants, and/or witnesses on which the Commission relies in this proceeding. Kay is certainly entitled to discover into information that may show bias on the part of such persons. Second, the Bureau's actions and inactions in such other proceedings belies its denial here that they have any connection or bearing on this proceeding. The Bureau continues to defer action on virtually every pending request by Kay, and in many instances it inexplicably grants applications and requests by

third parties over Kay's objections and often times in violation of Kay's express procedural rights. If this is not because of this proceeding, the Bureau must immediately provide a full and legally sufficient explanation for its discriminatory conduct. If, on the other hand, such disparate treatment *is* due to this proceeding, Kay is entitled to inquire into it.<sup>8</sup>

- (b) "Furthermore, since the Bureau has identified the people who have personal knowledge of the matters at issue, Kay should know the proceedings in which he is involved, in which those individuals are parties."

21. The Bureau essentially argues that it need not respond to a discovery request if it unilaterally determines that the requesting party already has actual or constructive knowledge of partial information from which the requested information may be determined or derived. Kay accepts this as an admission as to the standard by which, in part, Kay's responses to the Bureau's 1994 Section 308(b) request will be judged. Nevertheless, *see* paragraphs 12 and 14, *supra*.

F. Interrogatory No. 12

22. The Interrogatories asked:

As to each witness the Bureau intends to present at the hearing on this matter, identify each written statement of the witness concerning the testimony of the witness that is in the possession of the Bureau. If any such written statement exists or did exist, but is not in the Bureau's possession, state all facts regarding the current whereabouts of such statement and why it is no longer in the Bureau's possession.

Kay Below addresses each part of the Bureau's objection, *seriatim*.

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<sup>8</sup> Absolutely nothing would prevent the Bureau from processing Kay's routine applications and requests, making any authority issued expressly conditional on the outcome of this proceeding. Indeed, this is a quite common practice by both the Bureau and the Commission at large, and it would in no way prejudice the Bureau's case. While arguably this is a matter within the Bureau's discretion, the Bureau may not exercise its discretion to prejudice Kay in other proceedings because of the pending issues in this proceeding, but then turn around and deny the relevance of those other proceedings here. In short, the Bureau may not have it both ways.

- (a) "The Bureau objects to this interrogatory because it would require the Bureau to prematurely make a decision as to which witnesses it will call at trial. In order to answer that question, the Bureau must determine "each witness the Bureau intends to present at the hearing on this matter." The Bureau has not made final decisions in that regard."

23. This interrogatory does not require a final determination by the Bureau; rather, it merely seeks limited information based on the Bureau's current intent. The Bureau has presented a list of potential witnesses in this proceeding. It is a relatively simple matter for the Bureau to determine which of those witnesses have provided statements.

- (b) "Moreover, Section 1.362 of the Commission's Rules establishes the procedures under which Kay would receive witness statements. If a witness gives direct testimony, a party may seek production of the witness statement after the witness has given that direct testimony. If the witness does not testify, there would be no basis for producing that statement. Accordingly, any discovery concerning those witness statements would be premature."

24. Kay does not seek production of the witness statements. He merely seeks to ascertain whether there are any such statements or whether there were in the past any such witness statements which have been lost or destroyed. This is not violative of Section 1.362 of the Rules; indeed, it is precisely in order to protect and preserve his rights under Section 1.362 that Kay seeks this information at this time. Kay has independently obtained some witness statements provided to the Bureau by potential witnesses. Kay has previously disclosed two instances in which such statements were actually prepared by the Bureau for under oath verification by the witness, and which contained statements that the Bureau knew or should have known were false.<sup>9</sup> The same Bureau investigator responsible for these false witness statements was in direct contact with virtually every other current potential witness on the Bureau's list, and presumably obtained

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<sup>9</sup> See *Request for Inquiry and Investigation* (submitted March 2, 1998, in WT Docket No. 97-56) at ¶¶ 76-98; *Reply to Opposition* (submitted March 23, 1998, in WT Docket No. 97-56) at ¶¶ 54-63, and *Kay's Response to Wireless Telecommunications Bureau's Consolidate Opposition to Notices of Deposition and Motion for Protective Order* (submitted in this proceeding on February 27, 1998, and the supplement thereto submitted on March 3, 1998).

witness statements from them as well.<sup>10</sup> Kay is entitled to know now whether such statements exist and, if not, whether such statements once did exist but were destroyed, lost, or otherwise disposed of by the Bureau. Subject to any contradictory constraints of the Commission's *ex parte* regulations, see paragraphs 10 and 18, *supra*, actual production of the statements need not occur until after the witnesses testify. In light of the demonstrated irregularities and illegalities with regard to the Bureau's solicitation of witness statements, however, Kay is entitled to know now that such potentially important evidence is being properly reserved.

WHEREFORE, it is respectfully requested that the Bureau be compelled to answer Kay's *Further Written Interrogatories*.

Respectfully submitted this 6th day of May, 1998

JAMES A. KAY, JR.

By: Robert J. Keller

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<sup>10</sup> Indeed, Kay is aware of at least two other such witness statements, prepared by the Bureau for under oath verification by the witness, which contain false and inaccurate information.

**CERTIFICATE OF SERVICE**

I, Robert J. Keller, counsel for James A. Kay, Jr., hereby certify that on this 6<sup>th</sup> day of May, 1998, I caused copies of the foregoing *STATUS REPORT OF JAMES A. KAY, JR.* to be sent, first class U.S. mail, postage prepaid, except as otherwise indicated below, to the officials and parties in WT Docket No. 97-56, as follows:

HON RICHARD L SIPPEL  
ADMINISTRATIVE LAW JUDGE  
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2000 L ST NW STE 218  
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Robert J. Keller



BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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APR 20 2 55 PM '98

In the matter of )  
)  
JAMES A. KAY, JR. )  
)  
Licensee of one hundred fifty two Part 90 )  
licenses in the Los Angeles, California area )

ENFORCEMENT DIVISION  
TELECOMMUNICATIONS  
WT Docket No. 94-1470

To: Chief, Wireless Telecommunications Bureau

**FURTHER WRITTEN INTERROGATORIES**

James A. Kay, Jr. ("Kay"), by his attorney and pursuant to Sections 1.323 of the Commission's Rules and Regulations, 47 C.F.R. § 1.323, hereby submits the following interrogatories to the Wireless Telecommunications Bureau ("Bureau").

Instructions And Definitions

1. Please serve your answer to these interrogatories within 14 days of the date hereof.
2. These interrogatories are continuing and require the filing of supplemental or amended responses if, between now and the time of hearing, additional information is obtained or if the information provided changes or is found to be inaccurate or incomplete.
3. Each interrogatory shall be answered as fully as possible. If investigation is continuing or not yet complete, each interrogatory shall nevertheless be answered as fully as possible at the time the response is due, the response shall fully indicate the extent and nature of such incompleteness, and the response shall be supplemented, in accordance with Instruction No. 2, above, as soon as possible.
4. As used herein, unless the context demands otherwise: (a) all words in the singular shall be construed also to include the plural and vice versa, and (b) all words in either the masculine, feminine or neuter shall be construed to include the other genders.

5. Unless otherwise specified each interrogatory shall cover the time period from January 1, 1991, to the date of the response or any supplemental response pursuant to Instruction No. 1, above.

6. The words "and" and "or" shall be construed conjunctively, disjunctively or both as necessary to give the particular interrogatory the broadest and most inclusive scope.

7. The word "document" shall mean the original and each non-identical copy of all writings, recordings, photographs, and any other items from which writings, drawings, pictures, or images can be perceived, reproduced, or otherwise communicated whether directly or with the aid of any machine or device, including, but not limited to, letters, telegrams, cablegrams, telexes, internal or external E-Mail, memoranda, notes, records, reports, studies, calendars, diaries, agenda, minutes, books, pamphlets, brochures, manuals, periodicals, newspaper clippings, graphs, indexes, charts, tabulations, statistical accumulations, ledgers, financial statements, accounting entries, journal entries, ledger entries, checks, check stubs, promissory notes, press releases, agreements, contracts, drafts of agreements or contracts, affidavits, transcripts, legal documents, records of meetings, conferences, conversations and telephone calls, shipping logs and receipts, still photographs, negatives, slides, prints, videotapes, motion pictures, tape recordings, microfilms, computer tapes, computer files or disks or diskettes, retrievable data (whether encoded or taped electrostatically, electromagnetically or otherwise), printouts, recordings made through data processing techniques, and the written information necessary to understand and use such films, files and/or records.

8. The words "concern" or "concerning" shall mean and include pertaining to, referring to, relating to, alluding to, connected with, commenting on, regarding, comprising, discussing, showing, describing, mentioning, memorializing, reflecting, analyzing, constituting, and evidencing.

9. The words "person" or "individual" shall include as well as natural persons all forms of legal or judicial organizations or entities, including, but not limited to, corporations, partnerships, limited partnerships, joint ventures, associations, and political or governmental agencies.

10. If any interrogatory is not responded to fully on the ground of some claim of privilege, immunity, or confidentiality, the responding party shall state all facts upon which it relies to establish such privilege, immunity, or confidentiality. In the case where documents are requested to be identified, and the responding party may seek to establish some claim of privilege, immunity, or confidentiality as to the production of same, the responding party shall nonetheless identify the documents by stating the date of preparation, the author(s), the addressee(s), the names of all other people who have received copies of the document, and the general subject matter of the document.

11. The word "identify" shall mean:

- (a) when used with reference to a natural person, to state his full name, present or most currently known residential address and phone number, present or most currently known employer and employment address and phone number, and present or most currently known job title;
- (b) when used with reference to a legal or judicial organization or entity, to state its full formal name, its present principal place of business or activity, the state of its organization, and to identify its present president or chief executive officer,
- (c) when used with reference to a document, to state the document's date, author, addressee, type, and general subject matter, and if the document is not in the responding party's possession, custody, or control, the identity of

the person who the responding believes does have possession, custody, or control of the document; and

- (d) when used with reference to a communications, to state the date and time of the communication, to state the nature of the communication (oral, letter, email, meeting, etc.) identify each participant and each witness to the communication, and identify each document concerning such communication.

12. The phrase "state all facts" shall mean, in addition to stating the facts themselves:

- (a) to identify all persons with personal knowledge of such facts, and (b) if more than one person is identified as having personal knowledge of such facts, to indicate generally the extent of the personal knowledge of each such person identified so as to distinguish the personal knowledge of each such person identified, and (c) to identify each document concerning such facts.

13. If in response to an interrogatory to "identify the person most knowledgeable" about a particular subject matter the responder is unable to determine between two or more people who is the person "most" knowledgeable, then the responder shall identify all such persons.

14. The word "Bureau" shall mean the Wireless Telecommunications Bureau and/or the Private Radio Bureau, unless the context demands otherwise. It shall not include Commission employees not assigned to the Bureau, nor shall it include non-Commission employee consultants, agents, contractors, etc.

15. The phrase "Bureau employees" shall mean Commission employees assigned to the Bureau at the times relevant to the interrogatory and response. The term is intended to exclude Commission employees who were not assigned to the Bureau at the relevant times, provided,

however, that for purposes of these interrogatories, Mr. Gary Schonman is deemed to have been a Bureau employee at all relevant times.

16. The word "HDO" means the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* in the above-captioned proceeding, *WT Docket No. 94-147*, 10 FCC Rcd 2062 (1994).

#### Interrogatories

1. With respect to each license or call sign listed in Appendix A of the HDO, save and except those licenses or call signs that were deleted from this proceeding on May 7, 1996, in *James A. Kay, Jr.*, 11 FCC Rcd 5324 (1996):

- (a) identify each document concerning such license that has been destroyed or purged from the FCC's records;
- (b) state the date on which each such document was destroyed or purged;
- (c) state the reason for the destruction or purging of each such document;
- (d) identify each person responsible for or with knowledge of the destruction or purging of each such document.

For purposes of this request, "document" shall include, but not be limited to, documents generated by the Commission, documents produced by Kay, and any complaints, letters, memoranda, witness statements, notes of interview, or any other items relating to the Bureau's investigation of Kay and the prosecution of this revocation hearing against Kay.

2. If the Bureau lost any documents produced by Kay in discovery in this proceeding, identify each such document (providing Bates stamp numbers, if possible), state all facts concerning such loss, including, but not limited to, the date on which such loss was first discovered, and identify each person who had custody of the document prior to its loss.

3. As to each document identified in response to Interrogatory Nos. 1 and 2, above, state whether the document concerns any alleged violation of law, regulation, policy, or other alleged misconduct or wrongdoing by Kay relevant to any of the issues designated or added in this proceeding. If so, describe with specificity the alleged violation, misconduct, or wrongdoing, and state the issue or issues to which it is relevant.

4. State whether the Commission or the Bureau has or had a policy regarding record retention, the destruction or purging of documents, etc. Identify all documents concerning each such policy, and identify each person having knowledge of the development, implementation, and administration of such policy.

5. State whether, in addition to any general policy disclosed in response to Interrogatory No. 3, above, the Bureau, from January 1, 1991 to present, adopted any special policy or procedure with respect to documents concerning any investigation of and potential enforcement action against Kay, and state whether the Bureau took any precautions regarding the preservation of such documents. Identify all documents concerning each such policy, procedure, or safeguard, and identify each person having knowledge of the development, implementation, and administration of such policy, procedure, or safeguard.

6. Identify each person, save and except Bureau employees, who have been permitted to inspect or copy any of the materials produced by Kay in discovery in this proceeding. As to each such person, identify each such document (providing Bates stamp numbers, if possible), and state the date and place of such inspection or copying, and the purpose of such inspection or copying.

7. Identify each person, save and except Commission employees, whom the Bureau, from January 1991 to December 31, 1994:

- (a) communicated with concerning any investigation of Kay; and/or
- (b) permitted to inspect or copy any documents relating to any investigation of Kay, including, but not limited to, documents submitted to the Commission by Kay.

As to each such person, state the date, time, participants, and nature of each such communication, and identify each such document and state the date and place of such inspection or copying, and the purpose of such inspection or copying.

8. Identify each person now known by the Bureau to have information concerning any allegations that Kay:

- (a) operated a conventional station in the trunked mode;
- (b) violated any of the Commission's applicable construction requirements;
- (c) violated any of the Commission's applicable channel loading requirements;
- (d) violated any of the Commission's channel sharing requirements;
- (e) violated any of the Commission's channel recovery requirements;
- (f) abused the Commission's processes by filing applications in multiple names;
- (g) abused the Commission's processes in order to obtain cancellation of other licenses; or
- (h) maliciously interfered with the radio communications of other systems.

As to each such person, state specifically which of the above subsections (a) through (h) the person's knowledge concerns.

9. Identify each document in the Bureau's possession concerning any allegations that

Kay:

- (a) operated a conventional station in the trunked mode;
- (b) violated any of the Commission's applicable construction requirements;
- (c) violated any of the Commission's applicable channel loading requirements;
- (d) violated any of the Commission's channel sharing requirements;
- (e) violated any of the Commission's channel recovery requirements;
- (f) abused the Commission's processes by filing applications in multiple names;
- (g) abused the Commission's processes in order to obtain cancellation of other licenses; or
- (h) maliciously interfered with the radio communications of other systems.

As to each such document, state specifically which of the above subsections (a) through (h) the document concerns.

10. Identify each person who has provided the Bureau with information regarding Kay who is also party to a contested matter before the Commission involving Kay. For purposes of this interrogatory and Interrogatory Nos. 11 and 12, below, the "contested matter before the Commission involving Kay" does not include WT Docket No. 94-147, but it does include other contested matters whether or not the issues are the same or similar to some of the issues in WT Docket No. 94-147.

11. As to each person identified in response to Interrogatory No. 10, above, identify each such communication and state whether the communication concerns in any way the issues involved in any such contested matter.