12. 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.

Respectfully submitted,

JAMES A. KAY, JR.

By: Robert J Keller

Robert J. Keller
His Attorney

Law Office of Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
Suite 106 - Box 233
Washington, D.C. 20016-2157

Telephone: 301-320-5355
Facsimile: 301-229-6875
Email: rjk@telcomlaw.com

Dated: April 14, 1998

CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for James A. Kay, Jr., hereby certify that on this 14th day of April, 1998, I caused copies of the foregoing *FURTHER WRITTEN 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
FEDERAL COMMUNICATIONS COMMISSION
2000 L ST NW STE 223
WASHINGTON DC 20554-0003

JOHN SCHAUBLE ESQ
ENFORCEMENT DVISION
WIRELESS TELECOMMUNICAITONS BUREAU
FEDERAL COMMUNICATIONS COMMISSION
2025 M STREET NW STE 8308
WASHINGTON DC 20554-0002

WILLIAM H KNOWLES-KELLTT ESQ
GETTYSBURG OFFICE OF OPERATIONS
WIRELESS TELECOMMUNICAITONS BUREAU
FEDERAL COMMUNIATIONS COMMISSION
1270 FAIRFIELD RD
GETTYSBURG PA 17325-7245

Robert J Keller

Robert J. Keller
Counsel for James A. Kay, Jr.

Law Office of Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
Suite 106 - Box 233
Washington, D.C. 20016-2157

Telephone: 301-320-5355
Facsimile: 301-229-6875
Email: rjk@telcomlaw.com

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	)	

To: James A. Kay, Jr.

WIRELESS TELECOMMUNICATIONS BUREAU'S OBJECTIONS TO KAY'S INTERROGATORIES

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now offers its objections to interrogatories served upon the Bureau by James A. Kay, Jr. (Kay) on April 14, 1998.

2. The Bureau objects to all of Kay's interrogatories because they were propounded in violation of the limits imposed upon Kay by the Presiding Judge in his Order, FCC 95M-28 (released February 1, 1995). In that order, the Presiding Judge allowed Kay to ask ten interrogatories on each of the factual paragraphs of the Hearing Designation Order in this proceeding. Kay took full advantage of that opportunity. The Presiding Judge recently upheld that limitation in his Memorandum Opinion and Order, FCC 98M-42 (released April 7, 1998). Kay has repeatedly served additional interrogatories without seeking leave from the Presiding Judge to waive the limitation on additional interrogatories. It is patently inappropriate to flagrantly ignore an order of the Presiding Judge and submit interrogatories

without so muh as even requesting a waiver of the limitation imposed by the Presiding Judge. Accordingly, the Bureau objects to all of Kay's interrogatories because they violate the limitations imposed by the Presiding Judge and Kay has not received a waiver or modification of that limitation.

3. The Bureau also has specific objections to certain of Kay's interrogatories as described below.

4. Interrogatory 7: The Bureau objects to this interrogatory to the extent that it would require the disclosure of the identity of confidential informants. 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. 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.

5. Interrogatory 8: The Bureau objects to this interrogatory as repetitive. See the Bureau's Response to Interrogatories 2-7, 2-8, 3-1, 4-1, 5-1. 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 would be served by requiring the Bureau to answer this repetitive interrogatory.

6. Interrogatory 9: 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. The Bureau also objects to this interrogatory to the extent the interrogatory would require disclosure of the identity of confidential informants.

7. Interrogatories 10 and 11: 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 contested proceedings should not be litigated in this proceeding. 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.

8. Interrogatory 12: 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. 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 pertaining to that direct testimony 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.

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

April 28, 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 28th day of April, 1998, sent by the method indicated, copies of the foregoing "Wireless Telecommunications Bureau's Objections to Kay's Interrogatories" to:

Robert J. Keller, Esq.
Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
Suite 106 - Box 233
Washington, DC 20016-2157
(Counsel for James A. Kay, Jr.)
(Via Facsimile and Mail)

Aaron Shanis, Esq.
Shanis & Peltzman
1901 L Street, N.W., Suite 290
Washington, DC 20036
(Co-Counsel for James A. Kay, Jr.)
(Via Facsimile and Mail)

Joel S. Seidel, Esq.
Law Offices of Joel S. Seidel
18075 Ventura Boulevard, Suite 213
Encino, California 91316
(Co-Counsel for James A. Kay, Jr.)
(Via First Class 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

ATTACHMENT NO. 2

ATTACHMENT NO. 3

UNITED STATES GOVERNMENT

MEMORANDUM

DATE: September 15, 1994

REPLY TO ATTN OF: W. Riley Hollingsworth
Deputy Chief, Licensing Division

SUBJECT: James A. Kay, Jr.
Draft, Order to Show Cause

TO: Ralph A. Haller
Chief, Private Radio Bureau

THRU: Gary L. Stanford
Chief, Licensing Division

After receiving complaints from several sources that James A. Kay, Jr. had not constructed some stations for which he holds licenses (including stations located on National Forest Service land) and that Kay falsely reports his loading, we sent Kay a § 308(b) letter requesting an inventory of his licenses, copies of Kay's forest service permits, and Kay's billing records. Kay requested and received three extensions of time, clarification of the information sought, confidentiality and some assurance that proprietary information would be kept confidential. Kay then refused to provide the information we sought stating through counsel that "there is no date...for which submission of the requested information would be convenient". Mass Media Hearing Division has indicated that they would put this case on for us. Whether they do it, or Common Carrier Enforcement or someone in PRB, it should be started very soon according to OGC. That office is handling Kay's FOIA litigation. With the present workload of the Licensing Division legal staff, it is imperative that we not put on the case, although of course my staff and the examiners would enthusiastically help out.

Our records show that Kay has more than one hundred and sixty licenses in the land mobile services concentrated in the L.A. market. He also does business and holds additional licenses under other names. His licenses include trunked and conventional SMR licenses as well as business radio service licenses. Almost all of these licenses allow Kay to provide for profit communication service.

The primary purpose of the attached order to show cause is to preserve our ability to require responses to § 308(b) letters. We feel that failing to follow through on our request for

information may jeopardize our ability to adminster an effective compliance program.

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 included in the draft order miscellaneous allegations including possible misuse of Commission forms. These are based on various reports received from licensees. OGC and Mass Media Hearing Division have worked with us on the Order to Show Cause and have approved it.

We have not included Appendix A which would list Kay's known licenses.

Draft
14:59 9/15/94

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

JAMES A. KAY, JR.

Order to Show Cause
why more than one
hundred sixty four Part 90
licenses should not
be revoked or cancelled.

Order to Show Cause
why Kay should not be
ordered to cease and
desist from certain
violations of Commission
rules.

ORDER TO SHOW CAUSE AND
HEARING DESIGNATION ORDER

Adopted: **Released:**

By the Commission:

1. The Commission has before it for consideration more than one hundred sixty four land mobile licenses[1] authorized under Part 90 of the Commission's Rules. 47 C.F.R. § 90.1 et seq. The licensee, James A. Kay, Jr., has failed to respond to Commission requests for written statements of fact. In addition, we have reason to believe he has failed to comply with the Commission's Rules, and may not possess the character qualifications necessary to be a Commission licensee. For the reasons that follow, we will order Kay to show cause why his licenses should not be revoked or cancelled, and designate the matter for a hearing before an administrative law judge.

2. In response to complaints regarding the construction and operational status of a number of Kay's licensed facilities, on January 31, 1994, Commission staff requested additional information to determine whether Kay had committed rule violations by operating systems in the trunked mode that were licensed for conventional use and by not meeting the construction and placed-in-operation requirements of the Commission's Rules. 47 C.F.R. §§ 90.155, 90.631 and 90.633. This letter also requested information to enable the staff to determine if stations licensed to Kay have permanently discontinued operation in violation of our rules. 47 C.F.R. § 90.157. The letter also directed Kay to provide information detailing the loading of end users on Kay's base stations in order to assess Kay's compliance with our "forty mile" rule, which prohibits licensees from obtaining additional license grants within forty miles of an existing station until the existing station is loaded

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[1] See Appendix A.

to 70 mobile units per channel, and to apply our channel sharing and recovery provisions. 47 C.F.R. §§ 90.623, 90.627, 90.631 and 90.633.

3. We have received complaints that some of Kay's stations are not constructed. Because many of the stations are licensed to operate from mountain peaks managed by the U.S. Forest Service in the Los Angeles area, U.S. Forest Service permits are required to construct and operate on the peaks. In order to assess compliance with our construction and operation requirement, the staff requested that Kay identify the stations for which he holds FCC licenses as well as those he manages. The staff directed Kay to note those that are on U.S. Forest Service land.

4. Information available to the Commission also includes that James A. Kay, Jr. has done business under a number of assumed names. We believe these names include some or all of the following: Air Wave Communications, John C. Allen dba Buddy Sales, Buddy Corp., Buddy Sales, Buddys Sales, Buddy Corp. dba Buddy Sales, Buddy Corp. dba Southland Communications, Consolidated Financial Holdings, Hessman Security, Roy Jensen, James Kay, James A. Kay, Jr., Lucky's Two Way Radio, Luckys Two Way Radio, Luckys Two Way Radios, MetroComm, Multiple M Enterprises, Inc., Oat Trunking Group, Oat Trunking Group, Inc., Marc Sobel dba Airwave Communications, Southland Communications, Southland Communications, Inc., Steve Turelak, Triple M Enterprises, Inc., V&L Enterprises, and VSC Enterprises. The inquiry letter sent to Kay directed that he identify all station licenses he holds under all names under which he does business.

5. The letter also requested that Kay substantiate the loading of his stations by providing customer lists and telephone numbers. Such business records are the Commission's generally acceptable proof of loading. Kay was assured that proprietary information would be considered confidential.

6. Kay filed a response that provided none of the requested information. He simply referenced some dissimilar information provided to the Commission staff at other times. Kay failed to provide the requested information after numerous extensions of time, responding at one point that "there is no date...for which submission of the requested information would be convenient". Accordingly, we will designate this matter for hearing to determine Kay's fitness to remain a Commission licensee, in light of his conduct and his refusal to respond to the Commission inquiry.

7. We have also received complaints from various parties that James A. Kay, Jr. misused the Commission's processes. For example, licensees have complained that Kay has fraudulently induced them to sign blank Commission forms seeking modification of license. Kay allegedly then uses the form to cancel the licenses.

8. Accordingly, IT IS ORDERED that pursuant to Section 312(a) of the Communications Act of 1934, as amended, James A. Kay, Jr. is directed to show cause why his licenses should not be revoked or cancelled[2] at a hearing before an Administrative Law Judge, at a time and place to be designated in a subsequent Order, upon the following issues:

a) To determine whether James A. Kay, Jr. has abused the Commission's processes by failing to respond to a Commission inquiry;

b) To determine whether James A. Kay, Jr. has violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17, by failing to respond to a Commission inquiry;

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[2] Several of the rule violations discussed above are subject to an automatic cancellation condition: if the licensee does not meet his or her construction deadline, or if the licensee permanently discontinues operation, the license cancels automatically. See e.g., 47 C.F.R. §§ 90.157, 90.631 and 90.633.

c) To determine whether James A. Kay, Jr. has exceeded his license authority by operating systems in the trunked mode that were authorized for conventional use and to determine if he has violated any of the following: Sections 90.155, 90.157, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules, 47 C.F.R. §§ 90.155, 90.157, 90.623, 90.627, 90.631, and 90.633;

d) To determine if any of James A. Kay, Jr.'s licenses have automatically cancelled as a result of violations listed in subparagraph (c);

e) To determine whether James A. Kay, Jr. has misused the Commission's processes in order to defraud other licensees;

f) 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; and

g) To determine whether Kay should be ordered, pursuant to Section 312(b) of the Communications Act of 1934, as amended, to cease and desist from violation of Commission Rules 1.17, 90.155, 90.157, 90.623, 90.627, 90.631, 90.633, 47 C.F.R. §§ 1.17, 90.155, 90.157, 90.623, 90.627, 90.631, 90.633.

9. IT IS FURTHER ORDERED that the above issues be consolidated for hearing pursuant to Section 1.227(a)2) of the Commission's Rules.

10. IT IS FURTHER ORDERED that the Chief, Private Radio Bureau SHALL BE a party to the proceeding.

11. IT IS FURTHER ORDERED, that to avail themselves of the opportunity to be heard, the parties, pursuant to Section 1.91(c) of the Commission's rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause and Hearing Designation Order a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order. If a party fails to file an appearance within the time specified, the right of that party to a hearing shall be deemed to have been waived. See Section 1.92(a) of the Commission's rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause and Hearing Designation Order. See Section 1.92(a) of the Commission's rules. In the event the right to a hearing is waived by all the parties to this proceeding, the presiding Officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. See Section 1.92(c) of the Commission's rules.

12. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Private Radio Bureau.

13. IT IS FURTHER ORDERED that the Secretary send a copy of this order via certified mail-return receipt requested to Dennis K. Brown, Esquire, Brown and Schwaninger, P.C., 1835 K Street N.W., Suite 650, Washington, D.C. 20006, and have this order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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