

FCC MAIL SECTION Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98M-51

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In Matter of APR 21 2 59 PM '98)
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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

ORDER

Issued: April 15, 1998 ; Released: April 17, 1998

On March 17, 1998, the Wireless Telecommunications Bureau ("Bureau") filed a Motion For Ruling Regarding Attorney Witnesses.¹ The Bureau asked for a ruling in the alternative (1) that James A. Kay, Jr. ("Kay") either waive the attorney-client privilege with respect to contemplated testimony, or (2) be barred from calling counsel (present and former) as witnesses and (3) that Kay be barred from asserting advice of counsel as a defense.

Kay has not filed a responsive pleading. However, Kay formally withdrew the three counsel as witnesses and has represented that he will assert the attorney-client privilege if any of his counsel are called to testify. See Memorandum Opinion and Order FCC 98M-39, released March 31, 1998 at n.2.

In view of the present state of the record, the issues that are the subject of the Bureau's Motion For Ruling Regarding Attorney Witnesses will be regarded as moot while the case is in limine. However, since there has been no responsive pleading within the time specified under the Rules of Practice, rulings may be sought by the Bureau upon a showing of sufficient cause.²

SO ORDERED.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

¹ The Motion was prompted by Kay's witness list of March 9, 1998, which listed as potential witnesses Messrs. Dennis C. Brown and Robert Schwanger (former counsel) and Mr. Laurence J. Feinberg (current counsel representing Kay in various California cases).

² There remains open the possibility that former counsel could be sought later as a rebuttal witnesses, in which case there would need to be a ruling made on privilege.

³ Courtesy copies of this Order were sent to counsel by fax or e-mail on the date of issuance.