

# Shainis & Heltzman, Chartered

Counselors at Law

Suite 290  
1901 I Street, N.W.  
Washington, D.C. 20036

(202) 293-0011  
Fax (202) 293-0810

Aaron P. Shainis  
Lee J. Heltzman

DOCKET FILE COPY ORIGINAL

Of Counsel  
William H. Burross, III  
Ruth S. Baker-Battist  
Robert J. Keller

June 15, 1998

RECEIVED

JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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

Dear Ms. Salas:

Transmitted herewith are an original and fourteen (14) copies of the attachments to the Petition for Extraordinary Relief which was filed with the Commission Friday, June 12, 1998.

If there are any questions with respect to this matter, please communicate with the undersigned.

Sincerely yours,



Aaron P. Shainis  
Robert J. Keller  
Counsel for  
JAMES A. KAY, JR.

Enclosure

cc: William E. Kennard, Chairman  
Susan Ness, Commissioner  
Harold Furchtgott-Roth, Commissioner  
Michael K. Powell, Commissioner  
Gloria Trisanti, Commissioner  
Christopher J. Wright, General Counsel  
John I. Riffer, Senior Ethics Counsel  
H. Walker Feaster, III, Inspector General  
Daniel Phythyon, Chief, Wireless Telecommunications Bureau

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ORIGINAL

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

In the matter of )

**JAMES A. KAY, JR.** )

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

To: The Commission

**WT Docket No. 94-147**

**RECEIVED**

**JUN 15 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**ATTACHEMENTS TO THE  
PETITION FOR EXTRAORDINARY RELIEF**

Robert J. Keller  
**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](mailto:rjk@telcomlaw.com)

Aaron P. Shainis  
**Shainis and Peltzman**  
1901 L Street, N.W. - Suite 290  
Washington, D.C. 20036

Telephone: 202-293-0011  
Facsimile: 202-293-0810

Counsel for James A. Kay, Jr.

Dated: June 15, 1998

**ATTACHMENT NO. 1**

UNITED STATES GOVERNMENT

MEMORANDUM

DATE: September 15, 1994

REPLY TO

ATTN OF: W. Riley Hollingsworth *WRH*  
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 *GLS*  
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 administer 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.

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<sup>1</sup> 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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<sup>1</sup> 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<sup>2</sup> 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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<sup>2</sup> 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

kayosc2



RECEIVED

MAY 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the matter of

**HAROLD PICK**

Reinstatement of Canceled License for Business  
Radio Service (Conventional) Station WNZB262

Reinstatement of Canceled License for Business  
Radio Service (Conventional) Station WNZB276

FCC File No. \_\_\_\_\_

FCC File No. \_\_\_\_\_

To: The Commission

**APPLICATION FOR REVIEW**

James A. Kay, Jr. ("Kay"), by his attorney and pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.115(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.115(a), hereby seeks Commission review of the Wireless Telecommunications Bureau's inaction on and, hence, effective denial of, Kay's petitions for reconsideration in the captioned matters, in support whereof the following is respectfully shown:

**A. Questions Presented for Review**

- (a) May the Wireless Telecommunications Bureau effectively deny a valid and timely petition for reconsideration by simply refusing to take action on it?
- (b) Did staff of the Wireless Telecommunications Bureau violate Section 1.113(a) of the Commission's Rules and Regulations<sup>1</sup> when, more than four months after having canceled the above-captioned authorizations, and with no timely petitions for reconsideration or applications for review of such cancellations having been filed, the Bureau set aside the actions on its own motion and reinstated the authorizations?

<sup>1</sup> 47 C.F.R. § 1.113(a) provides: "Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion."

- (c) Does the Wireless Telecommunications Bureau and its staff have the delegated authority to interfere with rights mandated by a lawful order from a court of competent jurisdiction in a bankruptcy proceeding, when such order has not been stayed and is in full force and effect?

**B. Factors Warranting Commission Review**

- (a) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.
- (b) The action taken pursuant to delegated authority involves a question of law or policy which has not previously been resolved by the Commission.
- (c) The action taken pursuant to delegated authority causes prejudicial procedural error.

**C. Discussion**

James Kay has pending before the Wireless Telecommunications Bureau ("Bureau") two petitions for reconsideration in the above referenced matters. The petition in the case of Call Sign WNZB276 was filed on 11 March 1996 (Attachment No. 1, hereto),<sup>2</sup> and the petition in the case of Call Sign WNZB262 was filed on 20 March 1996 (Attachment No. 2, hereto).<sup>3</sup> No responsive pleadings have been filed,<sup>4</sup> and the issues presented are extremely simple. Nonetheless, the Bureau has not acted on the petitions for well over a year. This inaction by the Bureau is tantamount to a denial of Kay's requests for reconsideration, and Commission review of that denial is therefore appropriate.<sup>5</sup>

In connection with proceedings arising out of a petition for bankruptcy filed by Harold Pick, on May 12, 1995, the United States Bankruptcy Court for the Central District of California issued an *Order Authorizing Chapter 7 Trustee to Sell Assets of the Estate* in Case No. LA93-38738LF ("*Bankruptcy Order*"). The *Bankruptcy Order* authorized Trustee to sell the assets, including WNZB276 and WNZB262,

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<sup>2</sup> This Petition for Reconsideration was jointly filed by Kay and Duke Salisbury, Chapter 7 Trustee for Harold Pick d/b/a Communications Consultants Systems ("Trustee").

<sup>3</sup> This Petition for Reconsideration was jointly filed by Kay, the Trustee, and Viking Freight Systems, Inc.

<sup>4</sup> Although none of the petitioners has been served with any responsive pleadings in these matters, Kay has reasons to suspect that there have nonetheless been ex parte communications to Bureau staff by Harold Pick.

<sup>5</sup> See *MCI Telecommunications Corp. v. FCC*, 627 F.2d 322 (D.C. Cir. 1980) ("[D]elay in the resolution of administrative proceedings can ... deprive regulated entities, their competitors or the public of rights and economic opportunities without the due process the Constitution requires."); *Telecommunications Research and Action Center v. FCC*, 750 F. 2d 70 (D.C. Cir. 1984).

to Kay or his assignee. For consideration received,<sup>6</sup> Trustee executed and caused to be filed with the Commission, on or about FCC Forms 405A requesting cancellation of the captioned authorization.<sup>7</sup>

According to FCC records, of which official notice may be taken, the captioned authorizations were in fact canceled and the call signs purged from the FCC's license database. This occurred no later than 21 September 1995 for WNZB276 and no later than 17 October 1995 in the case of WNZB262. In February of 1995, however, more than four months after the Bureau action canceling the licenses and purging them from the database, the Bureau inexplicably reinstated the authorization. There was no public notice of this action, no actual notice to Trustee, and attempts to obtain an explanation from Bureau staff proved unfruitful. Accordingly, petitions for reconsideration were presented to the Bureau.

Pursuant to the *Bankruptcy Order*, Trustee had the legal and judicially conferred right to cause the captioned license to be canceled or assigned to its designee. Prior to submitting the FCC Form 405A, bankruptcy counsel for Trustee contacted Bureau staff to inquire about appropriate procedure and provided Bureau staff with a copy of the Order. Bureau staff provided Trustee with the requisite FCC Forms 405A and with a certified list of the licenses held by Harold Pick. Trustee followed the procedures suggested by Bureau staff. Thus, the cancellations were within the rights of Trustee, in full accordance with Commission procedure, and were pursued in good faith.

The Bureau's inexplicable reinstatement of the authorizations was clearly unlawful. Assuming for the sake of argument the Bureau had some basis for the action, it was without power to reinstate the authorization. Section 1.113(a) of the Commission's Rules provides that an action taken under delegated authority may be set aside *sue sponte* by such designated authority only within thirty days of the action. 47 C.F.R. § 1.113(a). The reinstatements in this case came more than four months after the actions canceling the licenses. Moreover, there was no notice to Trustee. There is no evidence in the public record that any party timely submitted a petition for reconsideration or an application for review within 30 days of the cancellations,<sup>8</sup> and if any such petition was filed, it was not served on Trustee as required by Commission Rule.<sup>9</sup> The only possible explanation, therefore, is that there were informal communications

<sup>6</sup> Kay successfully bid for the rights to direct the assignment and/or cancellation of the authorizations.

<sup>7</sup> The cancellations were filed on or about 11 July 1995 for WNZB276 and on or about 26 September 1995 in the case of WNZB262.

<sup>8</sup> See 47 C.F.R. § 1.106(f) & 1.115(d).

<sup>9</sup> See 47 C.F.R. § 1.47(g).

between Mr. Pick and Bureau staff leading to the reinstatement. If this is the case, then both Pick and Bureau staff have engaged in a blatant violation of the Commission's ex parte rules<sup>10</sup> as well as an unlawful interference with Mr. Kay's and Trustee's rights under the *Bankruptcy Order*.

The apparent theory for the Bureau's unexplained and unlawful actions was a then-pending appeal of the *Bankruptcy Order* by Pick.<sup>11</sup> This did not justify the actions however. The *Bankruptcy Order* was then, is now, and at all relevant times has remained, in full force and effect and has been neither stayed nor set aside by any judicial authority. Section 405(a) of the Communications Act, 47 U.S.C. § 405(a),<sup>12</sup> and Section 1.106(n) of the Commission's Rules, 47 C.F.R. § 1.106(f), provide that a Commission or staff action remains in full force and effect pending any reconsideration or review absent a specific order of stay. If a petition for reconsideration within the Commission does not automatically stay a staff action, it would be ironic indeed if an appeal in a judicial matter entirely unrelated to the Commission were deemed to do so. In any event, Pick's appeal of the *Bankruptcy Order* is no longer pending. On 14 April 1997 the United States Court of Appeals for the Ninth Circuit issued an *Order* in Case No. 96-56777 (Attachment No. 3, hereto) dismissing Pick's appeal for failure to prosecute. The appeal thus no longer provides even an inadequate and unlawful excuse for continued Bureau inaction.

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<sup>10</sup> By separate letter Kay asks the Commission's Managing Director to investigate these apparent violations of the ex parte rules.

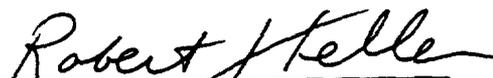
<sup>11</sup> Of course, Pick could have presented this information to the Bureau and sought the relief requested only in blatant violation of the ex parte rules with the complicity of Bureau staff.

<sup>12</sup> "No [application for review or petition for reconsideration] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission." 47 U.S.C. § 405(a). "Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof." 47 C.F.R. § 1.106(f).

WHEREFORE, the Bureau's initial action having been taken in violation of Commission rule, and the Bureau's continued inaction on Kay's petitions for reconsideration being unlawful and unconscionable, it is requested that the Commission direct the Bureau immediately to cancel the captioned authorizations and purge them from the license data base.

Respectfully submitted,

James A. Kay, Jr.



By: Robert J. Keller  
Its Attorney

LAW OFFICE OF ROBERT J. KELLER, P.C.  
4200 Wisconsin Ave., N.W. #106-233  
Washington, D.C. 20016-2143

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

Dated: 30 May 1997

**ATTACHMENT NO. 1**

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Mar 11 '96

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE  
SECRETARY

In the Matter of )  
)  
HAROLD PICK ) FCC File No. \_\_\_\_\_  
)  
Reinstatement of Canceled License for )  
Business Radio Service - Conventional )  
Station WNZB276 )

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION

James A. Kay, Jr. ("Kay") and Duke Salisbury, Chapter 7 Trustee for Harold Pick d/b/a Communications Consultants Systems ("Trustee"), by their attorneys and pursuant to Section 1.106(b) of the Commission's Rules and Regulations, 47 C.F.R. § 1.106(b), hereby seeks reconsideration of the Wireless Telecommunications Bureau action reinstating the captioned authorization of Harold Pick ("Pick"), in support whereof the following is respectfully shown:

1. In connection with proceedings arising out of a petition for bankruptcy filed by Harold Pick, on May 12, 1995, the United States Bankruptcy Court for the Central District of California issued an *Order Authorizing Chapter 7 Trustee to Sell Assets of the Estate* in Case No. LA93-38738LF ("Order").<sup>1</sup> The Order authorized Trustee to sell the assets, including WNZB276, to Kay or his

<sup>1</sup> A copy of the *Order* is attached hereto.

assignee. The *Order* is now, and at all relevant times has remained, in full force and effect and has been neither stayed nor set aside by any judicial authority. For consideration received,<sup>2</sup> Trustee executed and caused to be filed with the Commission, on or about July 11, 1995, an FCC Form 405A requesting cancellation of the captioned authorization.

2. According to FCC records, of which official notice may be taken, the captioned authorization was in fact canceled and the call sign purged from the FCC's license database no later than September 21, 1995. It appears, however, that the authorization was reinstated on or about February 8, 1996, more than four months after it was canceled. There was no public notice of this action, no actual notice to Trustee, and attempts to obtain an explanation from Bureau staff have been thus far unfruitful.

3. Pursuant to the *Order*, Trustee had the legal and judicially conferred right to cause the captioned license to be canceled for assigned to its designee. Prior to submitting the FCC Form 405A, bankruptcy counsel for Trustee contacted Bureau staff to inquire about appropriate procedure and provided Bureau staff with a copy of the *Order*. Bureau staff provided Trustee with the requisite FCC Forms 405A and with a certified list of the licenses held by Harold Pick. Trustee followed the procedures suggested by Bureau staff. Thus, the

---

<sup>2</sup> Kay successfully bid for the rights to direct the assignment and/or cancellation of the authorization.

cancellation was within the rights of the Trustee, in full accordance with Commission procedure, and was pursued in good faith.

4. The Bureau's inexplicable reinstatement of the authorization is clearly unlawful. Assuming for the sake of argument the Bureau had some basis for the action, it was without power to reinstate the authorization. Section 1.113(a) of the Commission's Rules provides that an action taken under delegated authority may be set aside *sua sponte* by such designated authority only within thirty days of the action. 47 C.F.R. § 1.113(a). The reinstatement in this case came more than four months after the action canceling the license. Moreover, it was done without notice to Trustee.

5. There is no evidence in the public record that any party timely submitted a petition for reconsideration or an application for review within 30 days of the cancellation,<sup>3</sup> and if any such petition was filed, it was not served on Trustee as required by Section 1.47(g) of the Rules.<sup>4</sup> The only possible explanation, therefore, is that there were informal communications between Mr. Pick and Bureau staff leading to the reinstatement. If this is the case, then both Pick and Bureau staff have engaged in a blatant violation of the Commission's *ex parte* rules as well as an unlawful interference with Mr. Kay's and Trustee's rights under the *Order*.

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<sup>3</sup> See 47 C.F.R. §§ 1.106(f) & 1.115(d).

<sup>4</sup> See 47 C.F.R. § 1.47(g).

WHEREFORE, it is requested that the February 8, 1996, action by the Bureau reinstating the captioned authorization be reconsidered and promptly set aside.

Respectfully submitted,

James A. Kay, Jr.

By: Robert J. Keller  
Robert J. Keller  
His Attorney

Law Office of Robert J. Keller, P.C.  
2000 L Street, N.W. - Suite 200  
Washington, D.C. 20036  
202-416-1670

Duke Salisbury, Chapter 7  
Trustee for Harold Pick

By: Annie Verdries  
Annie Verdries  
His Attorney

Lewis, D'Amato, Brisbois & Bisgaard  
Center Town Building - Suite 1400  
650 Town Center Drive  
Costa Mesa, California 92626  
714-545-9200

Dated: 11 March 1996

1 LEWIS, D'AMATO, BRISBOIS, & BISGAARD  
 2 ANNIE VERDRIES, ESQ. - ATTORNEY BAR NO. 91049  
 3 650 Town Center Drive, Suite 1400  
 4 Costa Mesa, California 92626-1970  
 5 (714) 545-9200

MAY 12 1995

5 Attorneys for Chapter 7 Trustee  
 6 DUKE SALISBURY

ENTERED  
 MAY 1

8 UNITED STATES BANKRUPTCY COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

11 In re:	)	Case No.: LA93-38738LF
	)	
12	)	Chapter 7
13 HAROLD RUDOLPH PICK	)	
14 COMMUNICATIONS CONSULTANTS	)	ORDER AUTHORIZING CHAPTER 7
SYSTEMS, COMPUTER CONSULTANTS	)	TRUSTEE TO SELL ASSETS OF THE
SYSTEMS	)	ESTATE
	)	
	)	DATE: March 8, 1995
	)	TIME: 10:00 a.m.
Debtor.	)	CTRM: 1675

8-1995  
 15  
 16  
 17  
 18

19 The continued hearing on Trustee's Motion for Order Approving  
 20 Sale of Property of the Estate was held on March 8, 1995 at 10:00  
 21 a.m. in courtroom 1675 before the Honorable Lisa Hill Fenning,  
 22 United States Bankruptcy Judge. Annie Verdries of Lewis, D'Amato,  
 23 Brisbois & Bisgaard appeared on behalf of Duke Salisbury, Chapter  
 24 7 Trustee; Jeffrey Cohen of Mickelson & Pavone appeared on behalf  
 25 of James Kay, a creditor and prospective purchaser; Joe Bogden of  
 26 Manatt, Phelps & Phillips appeared on behalf of Motorola, Inc., a  
 27 creditor; Harold Pick appeared in pro se and Gerard Pick was  
 28 present in court.

The court having reviewed the pleadings and records on file

LEWIS, D'AMATO  
 BRISBOIS & BISGAARD  
 Lawyers  
 650 Town Center Drive  
 Suite 1400  
 Costa Mesa, CA 92626  
 (714) 545-9200

1 herein, and having heard argument of counsel and the Debtor, and  
2 good cause appearing therefor, orders:

3 IT IS ORDERED the Motion to Sell Assets of the Estate to  
4 James A. Kay or his assignee for the sum of \$35,500.00 is approved  
5 effective May 15, 1995.

6 IT IS FURTHER ORDERED that the Trustee is authorized to sell  
7 the licenses and call signs issued by the Federal Communications  
8 Commission, listed in Exhibit "A" attached hereto and the pending  
9 applications for call signs and licenses with the Federal  
10 Communications Commission listed in Exhibit "B" attached hereto.

11 The trustee is further authorized to sell the estate's  
12 interest in the repeater tone panels, micro systems, power supply  
13 systems, amplifiers, splitters, dispatch trunking logic systems,  
14 antennas, cables, isolators and transmit combiner system located at  
15 Mt. Lukens, Saddle Peak and Oat Mountain as listed in Exhibit "C"  
16 attached hereto.

17 The purchase price for all the above identified items is  
18 \$35,500.00 cash, all due and payable immediately.

19 James A. Kay or his assignee is a good faith purchaser for  
20 value.

21  
22 Dated: \_\_\_\_\_

\_\_\_\_\_  
LISA HILL FENNING  
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

2-13

FEDERAL COMMUNICATIONS COMMISSION

GETTYSBURG, PA U.S.A.

STATEMENT OF RECORD

I, Gary L. Stanford, state that I am duly appointed and authorized Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau of the Federal Communications Commission and that as part of my duties as delegated official, I have the care, custody and control of all official records pertaining to the business of the said Commission's Gettysburg office.

I further state that, in my official capacity, I have caused a search to be made of the records of said Commission to verify the call signs:

WPCB783 was issued to Harold Pick dba Communications Consultants & Systems on April 21, 1993.

WPFJ421 was issued to Harold Pick on July 21, 1994.

WNZB276 was issued to Harold Pick dba Computer Consultant & Systems on March 1, 1994.

WPEF931 was issued to Harold Pick on February 24, 1994.

WNPP680 was issued to Harold Pick dba Communications Consultants & Systems on June 9, 1993.

WNYP742 was issued to Harold Pick dba Computer Consultants & Systems on March 23, 1992.

WPBB920 was issued to Harold Pick dba Computer Consultants & Systems on November 20, 1992.

WNWB345 was issued to Harold Pick dba Computer Consultant & Systems on September 1, 1992.

WNZB262 was issued to Harold Pick dba Communications Consultants & Systems on April 13, 1992.

WNZG388 was issued to Harold Pick dba Computer Consultant & Systems on May 5, 1992.

WIK855 was issued to Harold Pick dba CCS Communications on April 3, 1991.

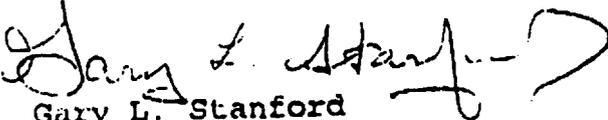
WNUR393 was issued to Computer Consultants & Systems on October 26, 1990.

WNYC849 was issued to Computer Consultants & Systems on December 31, 1991.

KAES211 was issued to Harold R. Pick & Kurt A. Skagge dba Computer Consultants & Systems on December 27, 1988, but expired on December 27, 1993.

The Commission Seal, affixed hereunder, shall be judicially recognized, pursuant United States Code Section 154(h).

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Federal Communications Commission to be affixed, this 14th day of February, 1995.



Gary L. Stanford  
Associate Bureau Chief  
Office of Operations - Gettysburg  
Wireless Telecommunications Bureau

EXHIBIT B