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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 16, 1998

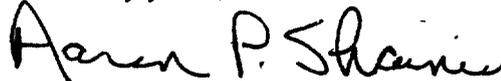
Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., is an original and six (6) copies of his Response to Order. Should the Commission have any questions with respect to this filing, please communicate with the undersigned.

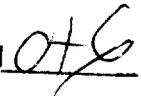
Sincerely yours,



Aaron P. Shainis
Counsel for
JAMES A. KAY, JR.

Enclosure

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JUL 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In Matter of)
)
James A. Kay, Jr.) WT DOCKET NO. 94-147
)
License of one hundred fifty two)
Part 90 licenses in the)
Los Angeles, California area)

To: Administrative Law Judge Richard L. Sippell

RESPONSE TO ORDER

1. James A. Kay, Jr., by his counsel, respectfully responds to the Presiding Judge's directive in an Order, FCC 98-M-95, released July 16, 1998. In that Order, the Presiding Judge states, *inter alia*, the following:

"The Presiding Judge must be advised in writing by July 17, 1998, at 12 noon, as to whether counsel are agreeable to continue holding non-recorded pre-hearing conferences via telephone for purpose of hearing preparations, with a written summarization Order from the Presiding Judge to follow." [Footnote omitted.]

In response the following is respectfully submitted:

2. Undersigned counsel is not agreeable to continue non-recorded pre-hearing conferences *via* telephone for the following reasons:
3. At the outset, it is respectfully submitted that there is little or no time to prepare for a telephonic pre-hearing conference. The Presiding Judge does not notify the parties in advance as

to the subject matter of the telephone conference. See, for example, the June 30, 1998 telephone conference. There, no advance notice was provided as to either time or subject matter¹. Accordingly, such conferences are wasteful of the parties' time since the parties do not have the time to prepare positions so that a meaningful discussion of the issues can occur. In this regard, the Bureau did not articulate a position at the June 30, 1998 conference.

4. In addition, when conferences are held without the benefit of a court reporter, there is no way to check on the accuracy of the Orders issued by the Presiding Judge. In this regard, the Judge's suggestion at footnote three of his Order, FCC 98M-95, that counsel could prepare a proposed Order summarizing the conference and submit it to the Presiding Judge and opposing counsel, adds unnecessary costs to the parties and is also burdensome and cumbersome to say the least. It also adds more delay.

5. Counsel submits that it is the right of the parties to have all matters that are discussed be on record and have a transcript made of all proceedings. Having matters on the record does not prejudice any party and minimizes disputes. As previously mentioned, On June 30, 1998, a telephone conference was initiated by the Presiding Judge in the above captioned proceeding. In that conference, undersigned counsel expressed the view that if any substantive matters were to be discussed, the conference should be on the record before a court reporter². The Presiding Judge ignored that request without articulating any reason. The Judge excluded that from his

¹ At the June 30, 1998 telephone conference, counsel had to literally drop everything with absolutely no notice.

² Counsel also asked that any rulings of the Presiding Judge be made in writing.

Order. Moreover, the Judge's Order inaccurately characterizes matters which had been discussed at the conference. In this regard, in the Order, the Judge recites that the procedure for the admission session had never been the subject of an objection by Kay until recently. Kay has never objected to the admission session³. Rather, Kay believes that the entire proceeding should be conducted consistent with the mandate of the Communications Act. The Presiding Judge's Order mischaracterizes Kay's position. However, since no transcript was made, there is no way to prove this.

6. In addition, undersigned counsel was asked by the Judge at the June 30, 1998, conference whether he would be impacted by having hearing sessions during the Rosh Hashana holiday. Counsel responded that it would have an impact and added that he had been reluctant to bring it up in light of the fact that the procedural schedule had been established prior to his entering a notice of appearance. The Presiding Judge stated that he would not have a hearing on September 21, 1998. Counsel then advised the Judge that the Rosh Hashana Holiday would not be over until sundown on Tuesday, September 22, 1998. The Presiding Judge, at that point, stated that his calendar only indicated that it was a "one day holiday" thereby challenging counsel's

³ In point of fact, during the conference call, undersigned counsel stated that Kay would participate in the scheduled admissions session, and would even be prepared to argue objections as to Kay's direct case exhibits. Kay objects, however, to the formal introduction into evidence of his exhibits prior to the conclusion of the Bureau's case. This is his right under Section 312 of the Act.

assertion that it was a two day holiday⁴. Moreover, the Judge indicated that he would not terminate the hearing for two days.⁵ The Presiding Judge's July 6, 1998, Order, FCC 98-91, is totally silent on this matter.

7. In light of recent actions by the Judge, Kay believes that in the interests of accuracy and fairness, all conferences should be held on the record before a court reporter.

Respectfully Submitted,

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JAMES A. KAY, JR.

July 16, 1998

⁴ Counsel is not appreciative of the Presiding Judge's ridicule of his religious beliefs. The Presiding judge may desire to confer with Judge Chachkin to verify the information he was given at the June 30, 1998 telephone conference.

⁵ The Judge, in taking this position, has managed to simultaneously display apparent ignorance and insensitivity.

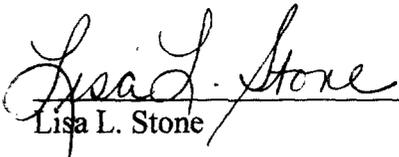
CERTIFICATE OF SERVICE

I, Lisa L. Stone, a secretary in the law firm of Shainis & Peltzman, Chartered, do hereby certify that on this 16th day of July, 1998, copies of the foregoing document were sent, via First-Class Mail, postage prepaid, to the following:

Honorable Richard Sippel*
Administrative Law Judge
Federal Communications Commission
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Washington, DC 20554-0003

John Schauble, Esq.*
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Gettysburg Office of Operations
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245



Lisa L. Stone

* Via Hand Delivery