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

FCC 98M-97

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In Matter of)	WT DOCKET NO. 94-147
)	
JAMES A. KAY, JR.)	
)	
Licensee of one hundred fifty two)	
Part 90 licenses in the)	
Los Angeles, California area.)	

ORDER

Issued: July 17, 1998 ; Released: July 20, 1998

On June 29, 1998, counsel for James A. Kay, Jr. ("Kay") represented the following in a letter to counsel for the Wireless Telecommunications Bureau ("Bureau"):

Finally, Kay believes that a viewing by the Presiding Judge of Kay's operations is essential to the development of a full and complete record. In this regard, a viewing may be requested of the Oat Mountain repeater site and Mr. Kay's principle offices. No more than one day would be required for viewing both locations. Such a viewing would enable the Presiding Judge and the Bureau to comprehend Mr. Kay's construction, installation, maintenance, and record keeping.

Counsel for Kay advised during the telephone conference that the above language was advisory only and that it was intended as an alert to an evidentiary request that might be made by Kay. It is deemed appropriate to respond to Kay's possible request for a viewing at this time in order to afford counsel preparation time.

The Presiding Judge has informally advised Kay's counsel of alternatives to an on-site viewing that were to be considered. Counsel could prepare a written narrative that would be submitted with appropriate still pictures, diagrams, drawings or renderings as demonstrative evidence. If the document is prepared sufficiently in advance of the Admissions Session and exchanged with Bureau counsel, the item possibly could be received into evidence on stipulation. That would be the preferred procedure.¹

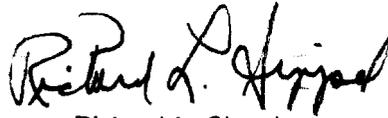
¹ Of course, the proposed exhibit would be subject to full consideration and a formal ruling on reliability by the Presiding Judge. For that purpose there could be voir dire.

A second but less efficient alternative method would be for Kay to prepare a video of the Oat Mountain facility which could be sought to be introduced through a witness who had first hand knowledge of the video's contents and preparation. An explanation of the video could be given through testimony with the right of Bureau counsel to cross examine the witness. The video could be supplemented with still pictures and drawings.

The Presiding Judge is not convinced that an on-site viewing would be necessary or even conducive to developing a full and complete record. It is not clear how the inspection might be accurately conducted or recorded or later reported. If it involves waiting to get back on the record there may be difficulties in the parties agreeing on what transpired. It would be unwieldy for the reporter to carry recording machinery around the site and to accurately record what is said. Such uncertainty and possible confusion of the record when weighed in light of the loss of hearing time would not be worth the risk. The other options referred to above would appear to be far more reliable and would involve a much more efficient use of hearing time.²

SO ORDERED.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

² The Commission's rules provide for mechanical reproductions as evidence. The rule requires a typewritten transcript of that which is mechanically recorded. See 47 C.F.R. §1.357.

³ Courtesy copies of this Order were e-mailed or faxed on date of issuance.