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Jay Peter Bragg

In Re Applications of:) MM DOCKET No.: 94-147
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 JAMES A. KAY, JR.)
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 Two Part 90 Licenses in the)
 Los Angeles, California Area)

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On Behalf of Defendant:

APPEARANCES (continued):

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P R O C E E D I N G S

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JUDGE SIPPEL: We're on the record. I'm going to ask counsel to please note their appearances for the record. Counsel for Mr. Kay?

MR. SHAINIS: Aaron Shainis and Robert Keller.

JUDGE SIPPEL: Good morning, gentlemen. And on behalf of the Bureau?

MR. SCHAUBLE: Good morning, Your Honor. John J. Schauble and William H. Knowles-Kellett.

JUDGE SIPPEL: Good morning. I have a few administrative matters. Let me just first announce that this is the first day of an admissions session scheduled under my order, FCC-98-M-40. Administratively, there is a pending motion to recuse, which I have denied at FCC-98-M-101, and up until this morning there had been no appeal filed, and so I was expecting that we were going to proceed with business on the admissions session this morning.

However, my legal technician just a few minutes ago handed an appeal to the Commission submitted by Mr. Kay's counsel. Correct, sir?

MR. SHAINIS: Yes.

JUDGE SIPPEL: And under the rules, well, I will ask the Bureau for their comments with respect to this development. Are you aware of this?

MR. SCHAUBLE: Yes, we are aware of this, Your

1 Honor.

2 MR. KNOWLES-KELLETT: We learned of it a couple of
3 minutes ago.

4 JUDGE SIPPEL: My reading of the rules and my
5 experience with this rule in the past tells me that I really
6 have no discretion other than to suspend the proceedings
7 pending the Commission's ruling.

8 MR. SCHAUBLE: Your Honor, I believe that is
9 correct. There is one caveat on this, which counsel was
10 discussing informally, and that is the question of there was
11 a supplement to that motion that was filed by Mr. Kay, and I
12 believe Your Honor could exercise jurisdiction to issue a
13 ruling on that supplement if Your Honor was so inclined. As
14 to remaining matters, the Bureau concurs that under the rule
15 matters would be suspended pending a ruling by the
16 Commission.

17 Counsel for Mr. Kay said they had no objection to
18 your addressing the supplement, so that both matters might
19 be dealt with at the Commission simultaneously, and the
20 Bureau doesn't object to that either. So, to the extent
21 that the rule is ambiguous, that the proceeding is staged so
22 that any substantive motions, rulings couldn't issue. The
23 motion of whether or not they will proceed with you as the
24 judge, we believe you could have authority to address.

25 JUDGE SIPPEL: I'm not sure I got all of that

1 last. I think what I hear you saying, and, Mr. Shainis, you
2 tell me or your counsel can tell me -- it may be easier if I
3 say what I understand this is all that is being said here,
4 that both of you have spoken to the counsel, "you" being the
5 Bureau counsel, have spoken with Mr. Kay's counsel, and that
6 there would be no objection if I waited until I completed my
7 consideration of the supplement and sent it all up to the
8 Commission as opposed to acting on the appeal immediately.
9 Or, to say it in another way, the case would be suspended
10 with the exception of my final action on the supplement.

11 MR. KELLER: The last way you said it is our
12 understanding. In other words, we don't believe that
13 probably you even have the authority necessarily to rule on
14 the supplement, but we are not interested in getting into
15 whatever delay that might entail; and, therefore, what we've
16 represented to counsel for the Bureau is we would not object
17 to your ruling on the supplement so as to expedite a
18 complete review by the Commission.

19 JUDGE SIPPEL: All right. I will take all of that
20 under advisement. I have received the Bureau's -- your
21 pleading is in opposition to what's asked for in the
22 supplement, and that will be my ruling this morning, that
23 is, we will be in suspension, with the exception of my
24 acting upon the matters in the supplement, to the extent
25 that I feel that that's necessary and appropriate.

1 Certainly, I'm not going to do anything to delay doing
2 something with the supplement. I want to get this issue to
3 the Commission as soon as I can, but I'm paying very serious
4 attention to the supplement, obviously.

5 Okay. Having said that, let me just announce that
6 there are going to be new hearing dates assigned in this
7 case, and the purpose of the new dates are to accommodate
8 Mr. Kay's counsel's observances of Rosh Hashanah, and the
9 dates would be to start the case on Monday, September 14th,
10 at 9 a.m. instead of Tuesday, the 15th, and to close at the
11 close of business on Friday, September 25th, at 5 p.m. or
12 earlier if possible.

13 Those are the two added dates at the beginning and
14 at the end of the session which I am now utilizing in an
15 effort to try and have as many days as possible while we're
16 out there on the West Coast if we are out there on the West
17 Coast in September.

18 The last thing that I have to say is that the
19 person -- I want to just make this -- I didn't state this at
20 the time of the conference of the 23rd of July, but the
21 person who I referred to at T.R. 426 as "somebody who was
22 conservative," that person was a former colleague of mine in
23 the Commission's Office of Administrative Law Judges. That
24 person was not a party or an attorney, and that person has
25 absolutely no connection with this case. And I say that for

1 the purposes of clarification in specific responses to your
2 footnote seven in the supplement. That's a point of
3 information; that's not anything more than that.

4 So the Bureau is certainly beginning to meet --
5 seems to be meeting its burden by bringing in two boxes of
6 documents today, but that's not going to happen at this
7 point. I want the record to reflect that I have received
8 the timely submission of the trial briefs and the latest
9 status report, and all of that information was timely and
10 extremely helpful to me in terms of knowing precisely where
11 counsel, all counsel were with respect to how we were going
12 to proceed this morning. Not that I necessarily agree with
13 everything in all of them, but I'm saying that I was fully
14 informed, and that was the most important part of those
15 requirements.

16 That's all I have, gentlemen. We are in recess
17 until further action by the Commission with respect to this
18 matter.

19 MR. SHAINIS: Thank you, Your Honor.

20 JUDGE SIPPEL: Have a good day.

21 (Whereupon, at 9:15 a.m., the hearing was
22 adjourned.)

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CASE TITLE: In Re: JAMES A. KAY
HEARING DATE: August 4, 1998
LOCATION: Washington, DC

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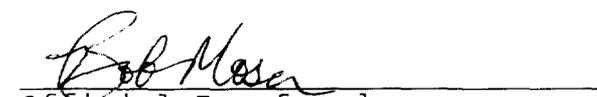
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