

WIRELESS TELECOMMUNICATIONS BUREAU
INDEX OF EXHIBITS
WT DOCKET NO. 94-147

| <u>Exhibit No.</u> | <u>Description of Exhibit</u> |
|---------------------------|---|
| 324 | Check of James A. Kay, Jr. made payable to Vincent Cordaro, issued December 30, 1994 (Kay, Vincent Cordaro) |
| 325 | Letter Dated April 14, 1995 from Vincent S. Cordaro to Mr. Terry Fishel (Kay, Vincent Cordaro) |
| 326 | Radio System Management and Marketing Agreement Between James A. Kay, Jr. and Jerry Gales, dated November 2, 1994 (Kay) |
| 327 | <u>Initial Decision of Administrative Law Judge John M. Frysiak In the Matter of Marc D. Sobel</u> , WT Docket No. 97-56, FCC 97D-13 (released November 28, 1997) (Official Notice Requested) |
| 328 | Hearing Transcript in WT Docket No. 97-56, Volume 2 (Official Notice Requested, Marc Sobel) |
| 329 | Hearing Transcript in WT Docket No. 97-56, Volume 3 (Official Notice Requested, Marc Sobel, Kay) |
| 330 | Orders in WT Docket No. 97-56 Correcting Hearing Transcript (Official Notice Requested) |
| 331 | Applications for SMR licenses filed in the name of Marc Sobel (Kay, Marc Sobel) |
| 332 | Letter Dated 3/18/93 from Marc Sobel to Federal Communications Commission (Marc Sobel, Kay) |
| 333 | Unredacted Copies of Invoices Submitted to Commission In Redacted Form with WTB Ex. 332 (Kay) |

WIRELESS TELECOMMUNICATIONS BUREAU
INDEX OF EXHIBITS
WT DOCKET NO. 94-147

| <u>Exhibit No.</u> | <u>Description of Exhibit</u> |
|---------------------------|--|
| 334 | Undated Letter (Bates Stamp Numbering start with 142) from Marc Sobel to Federal Communications Commission (Marc Sobel, Kay) |
| 335 | Unredacted Copies of Invoices Submitted to Commission In Redacted Form with WTB Ex. 334 (Kay) |
| 336 | Undated Letter (Bates Stamp Numbering start with 280) from Marc Sobel to Federal Communications Commission (Marc Sobel, Kay) |
| 337 | Unredacted Copies of Invoices Submitted to Commission In Redacted Form with WTB Ex. 336 (Kay) |
| 338 | Invoices submitted to Kay by Sobel for work done (Marc Sobel) |
| 339 | Radio System Management and Marketing Agreement dated October 28, 1994 (Kay, Marc Sobel) |
| 340 | Radio System Management and Marketing Agreement dated December 30, 1994 (Kay, Marc Sobel) |
| 341 | Addendum and Amendment to Radio System Management and Marketing Agreement, dated December 30, 1994 (Kay, Marc Sobel) |
| 342 | Motion to enlarge change or delete issues submitted in WT Docket No. 94-147 by James Kay on January 12, 1995 (Kay) |
| 343 | Motion to enlarge change or delete issues submitted in WT Docket No. 94-147 by James A. Kay, Jr. January 25, 1995 (Kay) |
| 344 | Agreement to Purchase Assets of Airwave Communications dated January 25, 1995 (Kay, Marc Sobel) |

WIRELESS TELECOMMUNICATIONS BUREAU
INDEX OF EXHIBITS
WT DOCKET NO. 94-147

Exhibit No.

Description of Exhibit

345

Excerpt from Commission Data Base Record re: Call
Sign WIL663 (Official Notice Requested)

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

JAN 31 1994

In Reply Refer To:
Compliance File No. 94G001

VIA REGULAR MAIL & CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

James A. Kay, Jr.
P.O. Box 7890
Van Nuys, CA 91409

Dear Mr. Kay:

The Commission has received complaints questioning the construction and operational status of a number of your licensed facilities. Specifically, the complaints allege that numerous facilities licensed to you are on U.S. Forest Service land, but do not have the requisite permits for such use. The presumption is that those facilities were not constructed and made operational as required by the Commission's rules and therefore, the licenses have canceled. In addition, the Commission has also received complaints questioning the actual loading and use of your facilities. The complaints allege that the licensed loading of the facilities does not realistically represent the actual loading of the facilities, thereby resulting in the warehousing of spectrum.

Based upon these allegations, we need more information to determine whether you are qualified to be a Commission licensee. We are authorized to request this information pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Section 308(b). Failure to respond timely, completely, and truthfully could result in initiation of revocation proceedings against your licenses.

(1) List alphabetically the call signs and licensee names of all facilities owned or operated by you or by any companies under which you do business. Annotate those facilities which are located on U.S. Forest Service land.

(2) Provide for each call sign listed in (1), the original date of grant of the call sign, the date the licensed station was constructed and placed in operation, and the type of facility.

(3) Provide a copy of the U.S. Forest Service permit for those facilities constructed and made operational on U.S. Forest Service lands in order of the list of call signs in (1). The permit should clearly indicate when such use was authorized.

Federal Communications Commission
Exhibit No. 1
Docket No. 94-147
Presented by Wireless Telecommunications Bureau
Disposition: Identified
Received
Rejected
Referred Sharon Bolton
Date 11/30/08

WT Docket No. 94-147 WTB Exhibit No. 1.

(4) For those facilities which are authorized on U.S. Forest Service lands, but for which you do not hold a permit, please explain the reason why a permit has not been obtained.

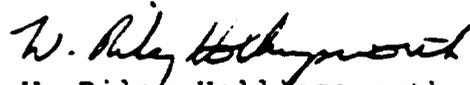
(5) For each station shown in (1) include a user list. The list must include the user name, business address and phone number, and a contact person, along with the number of mobile units and for trunked systems, the number of control stations, operated by the user. Users operating on multiple systems under (1) above should be annotated to identify all such systems and should be appropriately cross indexed.

(6) For each station in (1), please list the total number of units operated on each station. Such demonstration of use must be substantiated by business records.

Please send your reply to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245, Attention: Compliance - Room 41.

You are requested to furnish this information within 60 days of the date of this letter. Your attention is directed to Title 18, U.S.C. Section 1001, in which Congress has determined that a wilful false reply to a letter of this type may result in fine or imprisonment.

Sincerely,



W. Riley Hollingsworth
Deputy Chief, Licensing Division

amw/kayl2/rah

WTB EX. 2

WT Docket No. 94-147 WTB Exhibit No. 2.

BROWN AND SCHWANINGER

LAWYERS

1835 K STREET, N.W.

SUITE 650

WASHINGTON, D.C. 20006

DENNIS C. BROWN
ROBERT H. SCHWANINGER, JR.
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† NOT ADMITTED IN D.C.

(202) 223-8837

GETTYSBURG OFFICE
1270 FAIRFIELD ROAD, SUITE 16
GETTYSBURG, PENNSYLVANIA 17325

April 7, 1994

W. Riley Hollingsworth, Deputy Chief
Licensing Division
Federal Communications Commission
Gettysburg, Pennsylvania 17325

Re: Compliance File No. 94G001

Dear Mr. Hollingsworth:

We represent the radio system interests of James A. Kay, Jr. before the Federal Communications Commission. Accordingly, on behalf of Mr. Kay, pursuant to Section 0.459 of the Commission's Rules, we hereby respectfully request that Mr. Kay's concurrently filed response to the Commission's request for information in the above referenced matter be withheld from public inspection. In support of Mr. Kay's request, we show the following.

Section 0.459(a) of the Commission's Rules provides that "if the materials [which are being submitted] are specifically listed in §0.457, such a request is unnecessary." If the Commission determines that the information which Mr. Kay is concurrently filing is an investigatory record compiled for law enforcement purposes, and that disclosure would constitute an unwarranted invasion of personal privacy, then the Commission is bound to withhold the information, regardless of whether it grants the instant request.

In general, Mr. Kay does business as an individual. In his response, Mr. Kay disclosed certain information concerning his personal affairs, including the percent of his working hours which he spends on certain activities, certain facts concerning the extent to which the recent Northridge earthquake affected his activities, and the extent of certain of his business resources. To prevent an unwarranted invasion of his personal privacy, the Commission should, pursuant to Section 0.457(a) of the Commission's Rules, withhold all

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Federal Communications Commission
Docket No. 94-147 Exhibit No. 2
Presented by Wireless Telecommunications Bureau
Disposition: Identified
 Received
 Rejected
Reporter: Shirley Bull
Date: 11-30-98

of the information which Mr. Kay has submitted as personal and private to him as an individual.

In accord with Section 0.459(b) of the Commission's Rules, Mr. Kay demonstrates why the Commission should withhold from public inspection the materials which he is concurrently submitting:

As disclosed in the Commission's letter to Mr. Kay requesting the submission of information, the Commission's request was based on complaints filed by competitors of Mr. Kay. Mr. Kay has learned that some of his competitors have obtained copies of the Commission's request for information and have already made competitive use of the fact of the request to disparage his reputation in the radio communications service market. Affiliates of some of Mr. Kay's competitors have informed him that his competitors intend to obtain the information which he is submitting and distribute it in the Los Angeles area in an effort to disparage him among his customers. Mr. Kay is also reliably informed that some of his competitors intend to use the information to probe for weaknesses, if any, in his business strategy, and to solicit his current customers directly.

The Commission is certainly justified in receiving and investigating complaints alleging that a licensee has violated a certain rule. Indeed, the Commission has established a reward system for the filing of a verified and verifiable complaint in its Finder's Preference Request plan. However, the Commission should take care not to allow the filing of a complaint to be used as a subterfuge for a scheme to purloin sensitive competitive data. The Commission should review the complaints which it has reportedly received to see whether each makes out a *prima facie* case that any Commission rule has been violated. Then, it should ascertain whether each complaint was verified by the complainant under penalty of perjury. Finally, if those two tests are passed, the Commission should seek to determine whether the information submitted by the complainant can be independently verified. Mr. Kay respectfully suggests that a careful analysis of the complaints which the Commission says that it has received will lead to the conclusion that they constitute nothing more than attempts to provoke the Commission to collect data from Mr. Kay with the goal of the complainant's being able to request that the Commission disclose the essence of Mr. Kay's business to the complainant so that the complainant can use that information against Mr. Kay competitively. To prevent Mr. Kay's competitors from using the Commission as their private investigator, the Commission should withhold from public inspection any and all information which Mr. Kay is concurrently submitting.

In a matter which is currently pending before the Commission, namely, the Finder's Preference matter of Joe Hiram Trucking, Inc., in which Mr. Kay is the finder, the Commission recently disclosed to Mr. Kay certain financial information which Joseph Hiram had requested that the Commission keep confidential. Mr. Kay was able to use that data to Mr. Hiram's detriment. If the Commission is to expect disclosure of sensitive business data in response to its requests, it needs to demonstrate that it can be trusted to keep that

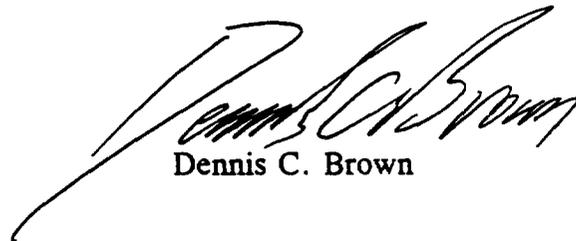
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data confidential. In the interests of progressing its credibility among those whom it regulates, the Commission should withhold from all members of the public, including the prying and predatory eyes of his competitors, any and all of the information which Mr. Kay is concurrently submitting.

The Los Angeles radio communications market has been roiled over the past two years by a severe downturn in the general pace of business activity, and by area-wide natural disasters. It is fundamental that when the economic pie becomes smaller, competition for the remainder becomes more savage. Mr. Kay's business has suffered from the economic problems which have afflicted the Los Angeles area for the past two years. Some of his competitors have suffered worse. In the present state of Mr. Kay's business, any significant leak of competitively sensitive information to other radio system operators could have devastating effects on the ability of his business to continue. To prevent harm to Mr. Kay under the harsh economic realities of the Los Angeles market, and to avoid jeopardy of disrupted service to his customers, the Commission should withhold from the public any and all information which Mr. Kay is submitting concurrently herewith.

For all the foregoing reasons, Mr. Kay respectfully requests that the Commission withhold from the public the information which he is concurrently submitting in the above referenced matter.

Respectfully submitted,



Dennis C. Brown

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WTB EX. 3

WT Docket No. 94-147 WTB Exhibit No. 3.

BROWN AND SCHWANINGER

LAWYERS

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WASHINGTON, D.C. 20006

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GETTYSBURG OFFICE
1270 FAIRFIELD ROAD, SUITE 16
GETTYSBURG, PENNSYLVANIA 17325

April 7, 1994

W. Riley Hollingsworth, Deputy Chief
Licensing Division
Federal Communications Commission
Gettysburg, Pennsylvania 17325

Re: Compliance File No. 94G001

Dear Mr. Hollingsworth:

We represent the radio system interests of James A. Kay, Jr. before the Federal Communications Commission. Accordingly, on behalf of Mr. Kay, we hereby respond to the Commission's recent request for information concerning Mr. Kay's operations in the Los Angeles, California, area.

1) In response to the Commission's request that Mr. Kay "list alphabetically the call signs and licensee names of all facilities owned or operated by you or by any companies under which you do business," we respectfully submit that the requested call sign and licensee name information is already within the Commission's possession. Accordingly, Mr. Kay respectfully declines the Commission's request that he duplicate that information or perform secretarial sorting tasks which the Commission could more expeditiously perform by the application of its computer resources to the call sign and licensee name information which it has in its own records.

In response to the Commission's request that Mr. Kay "annotate those facilities which are located on U.S. Forest Service land," Mr. Kay respectfully declines to supply that information for the reason that whether or not a station is located on U.S. Forest Service land is irrelevant to the stated purpose of the Commission's inquiry. The Commission's jurisdiction does not extend to regulation of the use of U.S. Forest Service land, and neither the Communications Act nor the Commission Rules prohibit the location of a radio facility on U.S. Forest Service land. Therefore, whether a station is or is not located on U.S.

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Federal Communications Commission

Docket No. 91-147 Exhibit No. 3

Presented by Wireless Telecommunications Bureau

Disposition

Reporter Shum Identified Received Rejected

Date 11-30-98

Forest Service land would be immaterial and irrelevant to a determination of whether Mr. Kay is qualified to be a Commission licensee. Consequently, the Commission has no need for and no authority to request information concerning whether a specific station is located on U.S. Forest Service land. Although the Commission has no need for the requested information to exercise its authority to regulate the radio spectrum, if the Commission desires to ascertain that information, we respectfully suggest that it may desire to plot each station on a map which shows the boundaries of the U.S. Forest Service land.

2) With respect to the Commission's request that Mr. Kay supply "the original date of grant of the call sign" for each station, we respectfully call to the Commission's attention that the requested information is already in the Commission's possession and Mr. Kay is not required to keep any record of that information. With respect to the Commission's request that Mr. Kay provide "the date the licensed station was constructed and placed in operation," we respectfully call to the Commission's attention that the Commission's Rules do not require Mr. Kay to keep any record of that information. To the extent that Mr. Kay has previously reported that information to the Commission, the requested information is already in the Commission's possession.

With respect to the Commission's request that Mr. Kay provide "the type of facility" for each call sign, we respectfully submit that the request is not sufficiently specific to allow Mr. Kay to be sure what the Commission requested. However, we respectfully suggest that the requested information is already within the Commission's records and may be found by referring to the Commission license for each station.

3) With respect to the Commission's request that Mr. Kay "provide a copy of the U.S. Forest Service permit for those facilities constructed and made operational on U.S. Forest Service lands," we respectfully call to the Commission's attention that the existence of permits for use of U.S. Forest Service lands is not a subject which is within the Commission's jurisdiction. Neither the Communications Act nor any Commission Rule requires that a Commission licensee obtain a permit from the U.S. Forest Service for a Private Radio Services facility. With respect to lands administered by the Bureau of Land Management, the Commission has determined that it will issue a license for a radio station without regard to whether the BLM has granted consented to the proposed facility, Ft. Collins Telecasters, MM Docket No. 83-777, _____ FCC Rcd. _____ (Review Board) (Released May 9, 1986 RCC 86R-26), and cases cited therein. We suggest that, were the issue to arise with respect to lands administered by the U.S. Forest Service, the Commission would take the same position which it has taken with respect to the BLM, namely, that whether a land management agency of the Federal Government has consented to the operation of a proposed station is irrelevant to the exercise of the Commission's authorized functions.

Because the regulation of the use of U.S. Forest Service lands is not within the Commission's jurisdiction, because the requested information would not be relevant to the

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Commission's administration of the Communications Act, and because the requested information would not be relevant to a determination as to whether Mr. Kay is qualified to be a Commission licensee, Mr. Kay respectfully declines to supply the requested information.

In its letter of inquiry, the Commission stated that "the presumption is that those facilities [, if any, for which he does not hold a U.S. Forest Service permit] were not constructed and made operational as required by the Commission's rules and therefore, the licenses have cancelled." It is not clear from the Commission's letter whether the presumption to which the letter refers was the presumption of the complainant(s) or is a presumption of law which the Private Radio Bureau has purported to initiate by its letter of inquiry. It is also not clear from the Commission's letter whether the reported presumption is purported to be rebuttable or irrebuttable. Accordingly, Mr. Kay was not provided with sufficient notice required for him to respond fully to the statement. In an abundance of caution, however, we respectfully submit that any such presumption would be unreasonable and contrary to law.

The Commission is authorized to regulate the use of the electromagnetic spectrum. It is not authorized to regulate the use of U.S. Forest Service lands. A radio system operates equally well, with or without a U.S. Forest Service permit. Just as the Commission's Rules do not require a licensee to comply with local zoning requirements, property tax requirements, the Americans With Disabilities Act, or the Federal Highway Administration Act to effectuate completion of construction of a radio facility and to place it in operation, the existence or non-existence of a U.S. Forest Service permit is immaterial and irrelevant to the completion of construction of a Private Radio Services facility or the placing of such a station in operation. Since the Commission does not require compliance with any law other than that which is within the Commission's jurisdiction for a licensee to be deemed to have completed construction of a station and to have placed it in operation, the presumption referred to by the Commission's letter of inquiry is unreasonable.

The presumption referred to by the Commission's letter is also unreasonable because the incentives which lead a person to complete construction of a Private Radio Services station and to place it in operation are not the same as the incentives which lead a person to add, or not add, a station to his U.S. Forest Service permit. While a licensee is compelled to complete construction of a Private Radio Services station and to place it in operation within a certain period of time at the risk of loss of his Commission license, he is under no similar compulsion to add a station to his U.S. Forest Service permit. Because the U.S. Forest Service demands a percentage of the user's revenues as compensation for use of U.S. Forest Service land, there is a positive disincentive for a user to add a station to his U.S. Forest Service permit within any certain period of time. Since the licensee is subject to competing incentives and disincentives in completion of construction of a station in a timely manner and in adding the station to his U.S. Forest Service permit. the presumption suggested by the Commission's letter is unreasonable.

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The presumption referred to by the Commission's letter is also unreasonable because it does not take into account the way in which the Forest Service's permit system operates. The Forest Service issues an initial permit to a radio station licensee. Subsequent to the issuance of the initial permit, the licensee is subject to a "self-certification" requirement, under which he is to submit to the Forest Service a report of the addition of any frequency at the site which he is authorized to use. Subsequent to the licensee's reporting the addition of a frequency, in the fullness of time, the Forest Service routinely issues an amendment to the initial permit. However, just as the Commission is currently backlogged by several quarters in the processing of SMR-Trunked system applications, the Forest Service runs a perpetual backlog in responding to permittee updates. In some current instances, Mr. Kay has been waiting nearly one year for a response from the Forest Service to his reports of frequency additions. Accordingly, a Forest Service permit cannot be relied upon as any evidence of the existence of a radio facility at any certain site.

The suggested presumption is contrary to law because it presumes the existence of certain facts based on an alleged violation of a rule which is not within the Commission's jurisdiction. That the Forest Service did not hear a tree fall in the forest does not reasonably lead to the conclusion that no lumberjack had been at work there. Just as the absence of a record in the Forest Service's tree files does not even tend toward a conclusion that a certain tree must not exist, the absence of a certain radio station from a U.S. Forest Service permit does not tend toward any conclusion, whatsoever, concerning whether the station was actually constructed and placed in operation.

4) The Commission's jurisdiction does not extend to the regulation of U.S. Forest Service lands. The reasons why Mr. Kay may or may not hold a U.S. Forest Service permit for a certain radio facility are immaterial to the Commission's regulation of the radio spectrum. Therefore, Mr. Kay respectfully declines to supply the requested information.

5) With respect to the information requested by Item 5 of the Commission's letter of inquiry, the Commission has sought to engage in an unlawful fishing expedition. We respectfully submit that the extent of information requested is unnecessary to fulfill the stated purpose of the Commission's inquiry. Since the Commission stated that it had received "complaints questioning the actual loading and use of [Mr. Kay's] facilities," the Commission might be able to meet its stated objectives by requesting information which was directly related to the complaints upon which its inquiry was based. However, the breadth of information requested is clearly well beyond the scope of the complaints which the Commission stated that it has received and well beyond the extent of information which the Commission might need to determine the accuracy of the reported complaints.

With respect to the specific information requested, we respectfully note that the stations licensed to Mr. Kay are not shared, *see*, Notice of Proposed Rule Making in PR Docket No. 92-78, 7 FCC Rcd. at 2880 n. 38 (1992), and the case cited therein. Therefore, the Commission does not require Mr. Kay to maintain any record of his users' names,

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business address, phone number, contact person, number of mobile units or number of control stations, or to take any action when the loading on his stations changes. Neither does the Commission require a licensee to maintain any record of the various systems with which a given customer operates. Because the Commission's Rules do not require a licensee to maintain the above referenced information, we respectfully submit that the Commission has no authority to request that information from Mr. Kay.

In its letter to Mr. Kay dated March 1, 1994, the Commission declined to provide Mr. Kay with any assurance that it would treat any customer information which he submitted with strict confidence. In the Finder's Preference matter of Joe Hiram Trucking, Inc., in which Mr. Kay is the finder, the Commission recently disclosed to Mr. Kay certain financial information which Joseph Hiram had requested that the Commission keep confidential. As our office had reported to you, during the pendency of your request for information, the existence and contents of your request leaked out of the Commission to Mr. Kay's competitors and the information that he has been asked certain questions has been used against him in their efforts to obtain the trade of his end users. The information which the Commission has requested concerning Mr. Kay's end users constitutes essentially the entire value of the business which he has built up over many years of hard effort, and we trust that the Commission will understand that he is unwilling to share that information with his competitors. Because the Commission has declined to assure Mr. Kay of confidential treatment, and because the Commission's recent actions give Mr. Kay no cause for confidence that any information which he might submit would be kept from the eyes of his competitors in the highly competitive Los Angeles market, we trust that the Commission will understand why Mr. Kay respectfully declines the Commission's request.

The Commission's request at Item 6 essentially requests that Mr. Kay tell the Commission everything about everything. However, the Commission has declined to provide Mr. Kay with an assurance that he will be immune to criminal prosecution based on the information which it has requested. Accordingly, Mr. Kay respectfully declines to supply the Commission with the requested information on the basis of the guarantees of the Fifth Amendment to the United States Constitution.

6. With respect to the information requested by Item 6 of the Commission's letter of inquiry, Mr. Kay respectfully reports that the question is not sufficiently specific for him to supply the requested information. Item 6 did not specify any date or time as the window of time during which the information was requested. The number of units operated on each of Mr. Kay's stations is subject to wide variation with times of day, economic status of the Los Angeles area, season of the year, weather, and external events affecting mobile radio system use. Further, many of Mr. Kay's end users are equipped with radio transceivers which are capable of operating in association with various stations, including stations for which he holds the license, and other stations, as well. Accordingly, at any given instant of time, Mr. Kay may not know the number of mobile units operated on each of his stations.

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Further, the Commission's Rules require a licensee to know the loading on a given station only at the time that he requests additional channels or at the time that he requests renewal of the authorization, where renewal of the authorization is conditioned on meeting a certain level of loading, *see, e.g.*, 47 U.S.C. §90.658. Since the Commission's Rules do not require Mr. Kay to know the loading on his stations except at those specified times, we respectfully submit that the Commission is not authorized to request such information for purposes of determining whether Mr. Kay is qualified to be a Commission licensee.

Between the time that the complaints were filed on which the Commission's request was based and the time of Commission's request, Mr. Kay had already supplied information to the Commission concerning loading of stations which he operates in the 800 MHz band. Accordingly, with respect to that information, the Commission's request is duplicative and we respectfully refer the Commission to its records of Mr. Kay's response to its earlier request.

The Commission's request is unduly and unreasonably burdensome in light of the local conditions of the Los Angeles market. Mr. Kay is still spending a substantial part of each day recovering from the Northridge earthquake of earlier this year. Although none of Mr. Kay's radio facilities was substantially damaged, his office and shops suffered significant damage, as did his residence. Because of the extent of damage to his home, Mr. Kay is in the process of acquiring a different residence and that activity is consuming a large amount of his time and attention. Because of the economic disruption caused by the earthquake, combined with the pre-existing condition of the Los Angeles area economy, as weakened by the brush fires of late 1993, Mr. Kay is currently spending one full day per week in the activity of collecting his charges from delinquent customers. In sum, Mr. Kay does not have the time and does not have the employee resources necessary to fulfill the Commission's extensive informational request at this time.

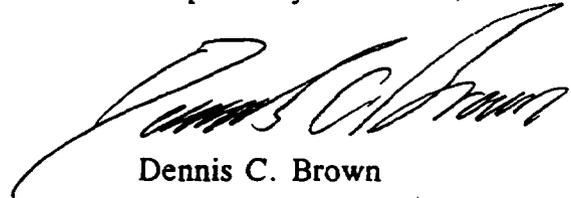
The Commission's Rules prescribe certain consequences for a licensee's failure to have sufficient mobile units and/or control stations in service at certain specified times, *id.* Determination that a person is not qualified to be a Commission licensee is not among those consequences. Since revocation of a license is not among the consequences provided by the Commission's Rules for failure to have sufficient loading, the requested information is not relevant to the stated purpose of the Commission's inquiry.

By submission of the foregoing, Mr. Kay avers that he has fulfilled his obligation in accord with 47 U.S.C. §308(b) by substantively responding to the Commission's letter of inquiry in all respects, including the exercise of his right to decline an invitation to produce information when the request is outside the scope of the law. Mr. Kay stands ready to cooperate with the Commission in all requests which are reasonably calculated to forward the legitimate exercise of the Commission's authority in the fulfillment of its statutory duties. Accordingly, nothing contained herein should be deemed to be a failure by Mr. Kay to comply with all requirements of law.

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We thank the Commission for its letter of inquiry and trust that this is fully responsive thereto. If we can assist the Commission further, please give us a call at your convenience to discuss the matter further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis C. Brown", written in a cursive style.

Dennis C. Brown

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WTB EX. 4

WT Docket No. 94-147 WTB Exhibit No. 4.

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

MAY 11 1994

VIA REGULAR AND CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James A. Kay, Jr.
P.O. Box 7890
Van Nuys, California 91409

Re: Application Nos. 415060 415243, 415255
628816 and 632210

Dear Mr. Kay:

The Commission needs more information in order to determine what action to take on the above referenced applications.

Specifically, the Commission requires answers to our letter to you dated January 31, 1994 (copy attached) which requested information to determine whether you are qualified to be a Commission licensee. We were authorized to request this information from you pursuant to § 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b).

Failure to provide the aforementioned response to my attention at the above-captioned address within fourteen (14) days from the date of this letter, will result in the dismissal without prejudice of the above applications.

Please note that if you claim copyright protection in your response, we require that you file 50 copies of your response by May 25, 1994, as well as a full justification of how the copyright laws apply, including statutory and case cites with your request.

Sincerely,



W. Riley Hollingsworth
Deputy Chief, Licensing Division

cc: Dennis C. Brown, Esquire

Federal Communications Commission
Docket No. 91-147 Exhibit No. 4
Presented by Wireless Telecommunications Bureau
Disposition
Identified
Received
Rejected
Reporter Shum Billy
Date 11/30/95

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

JAN 31 1994

In Reply Refer To:
Compliance File No. 94G001

VIA REGULAR MAIL & CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

James A. Kay, Jr.
P.O. Box 7890
Van Nuys, CA 91409

Dear Mr. Kay:

The Commission has received complaints questioning the construction and operational status of a number of your licensed facilities. Specifically, the complaints allege that numerous facilities licensed to you are on U.S. Forest Service land, but do not have the requisite permits for such use. The presumption is that those facilities were not constructed and made operational as required by the Commission's rules and therefore, the licenses have canceled. In addition, the Commission has also received complaints questioning the actual loading and use of your facilities. The complaints allege that the licensed loading of the facilities does not realistically represent the actual loading of the facilities, thereby resulting in the warehousing of spectrum.

Based upon these allegations, we need more information to determine whether you are qualified to be a Commission licensee. We are authorized to request this information pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Section 308(b). Failure to respond timely, completely, and truthfully could result in initiation of revocation proceedings against your licenses.

(1) List alphabetically the call signs and licensee names of all facilities owned or operated by you or by any companies under which you do business. Annotate those facilities which are located on U.S. Forest Service land.

(2) Provide for each call sign listed in (1), the original date of grant of the call sign, the date the licensed station was constructed and placed in operation, and the type of facility.

(3) Provide a copy of the U.S. Forest Service permit for those facilities constructed and made operational on U.S. Forest Service lands in order of the list of call signs in (1). The permit should clearly indicate when such use was authorized.

(4) For those facilities which are authorized on U.S. Forest Service lands, but for which you do not hold a permit, please explain the reason why a permit has not been obtained.

(5) For each station shown in (1) include a user list. The list must include the user name, business address and phone number, and a contact person, along with the number of mobile units and for trunked systems, the number of control stations, operated by the user. Users operating on multiple systems under (1) above should be annotated to identify all such systems and should be appropriately cross indexed.

(6) For each station in (1), please list the total number of units operated on each station. Such demonstration of use must be substantiated by business records.

Please send your reply to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245, Attention: Compliance - Room 41.

You are requested to furnish this information within 60 days of the date of this letter. Your attention is directed to Title 18, U.S.C. Section 1001, in which Congress has determined that a wilful false reply to a letter of this type may result in fine or imprisonment.

Sincerely,



W. Riley Hollingsworth
Deputy Chief, Licensing Division

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