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## SUMMARY

The record in this proceeding conclusively shows that James A. Kay, Jr. is not qualified to remain a Commission licensee. Kay has contemptuously attempted to stonewall a Commission investigation into his compliance with the Commission's Rules. The Commission, in response to complaints it received, initiated an investigation to determine whether Kay was violating the Commission's Rules. As part of that investigation, as part of its duties pursuant to Section 308(b) of the Communications Act, the Commission directed Kay to provide certain information. Kay refused to provide that information without offering any legitimate authority or justification for his actions. Notwithstanding the Commission's clear authority to obtain the information it was requiring from Kay, the Commission attempted to accommodate Kay's concerns. Kay still refused to provide the information. Moreover, the excuses Kay offers for refusing to provide that information are legally insufficient and cannot be accepted because the record shows that Kay could have provided the required information. Kay's attempt to obstruct the Commission's inquiry shows that he is not qualified to remain a Commission licensee.

Kay's records also show that in a large number of instances, Kay has failed to comply with the Commission's loading requirements. He has applied for authorization to have thousands more mobile units than he has in use or could expect to have placed in use within eight months after his applications were granted. Furthermore, Kay has not modified his licenses to match his licenses to his actual loading as required by the Commission's Rules. Furthermore, Kay's attempt to bolster his loading by relying upon rental units and loaners cannot be credited

because he did not provide information concerning these units in a timely manner and because he cannot say what stations those units were operating on. Kay has also stipulated that 69 repeater stations were either not constructed or permanently discontinued operation within the meaning of the Commission's Rules.

The willful and malicious interference issue should be resolved in Kay's favor because there is insufficient evidence that Kay intentionally interfered with the communications of others.

Kay repeatedly and regularly abused the Commission's processes by using the names of others to apply for stations in which he was the real-party-in-interest. In the case of Roy Jensen, Kevin Hessman, and Vincent Cordaro, Kay had end user applications filed that represented that these individuals ran businesses and intended to use mobile units when Kay knew that was not the case. In the case of Marc Sobel, Carla Pfeifer, Vincent Cordaro, and Jerry Gales, Kay operated and held *de facto* control of stations licensed to those individuals. Moreover, Kay repeatedly misrepresented facts and lacked candor with the Commission concerning his relationship with those individuals or his involvement in those stations. Specifically, in the case of Marc Sobel, Kay hid his relationship with Marc Sobel from the Commission when he knew that the Commission wanted information concerning that relationship. He also knowingly misrepresented that he had no interest in any of Sobel's stations.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

In the Matter of )  
 )  
**JAMES A. KAY, JR.** ) WT DOCKET NO. 94-147  
 )  
 )  
Licensee of 152 Part 90 Stations in the )  
Los Angeles, California Area )  
  
To: Honorable Joseph Chachkin  
Chief Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Chief, Wireless Telecommunications Bureau, by his attorneys, now proposes the following findings of fact and conclusions of law for the resolution of the issues in this proceeding.

**I. PRELIMINARY STATEMENT**

1. James A. Kay, Jr. is the licensee of 152 stations in the greater Los Angeles area. WTB Ex. 290. *By Order to Show Cause, Hearing Designation Order, and Notice of Opportunity For Hearing for Forfeiture*, 10 FCC Rcd 2062 (released December 13, 1994) ("*Show Cause Order*"), the Commission commenced the instant proceeding to determine ultimately whether the licenses for these stations should be revoked.

2. The *Show Cause Order* in this case designated eight issues, located at subparagraphs 10(a) through 10(h), for resolution by the Presiding Administrative Law Judge:

(a) To determine whether James A. Kay, Jr. has violated Section 308(b) of the Act and/or Section 1.17 of the Commission's Rules, by failing to provide information requested in his responses to Commission inquiries;

(b) To determine whether James A. Kay, Jr. has willfully or repeatedly operated a conventional station in the trunked mode in violation of Section 90.113 of the Commission's Rules;

(c) To determine if Kay has willfully or repeatedly violated any of the Commission's construction and operation requirements in violation of Sections 90.155, 90.157, 90.313, 90.623, 90.627, 90.631, and 90.633 of the Commission's Rules;

(d) To determine whether James A. Kay, Jr. has abused the Commission's processes by filing applications in multiple names in order to avoid compliance with the Commission's channel sharing and recovery provisions in violation of Sections 90.623 and 90.629;

(e) To determine whether James A. Kay, Jr. willfully or maliciously interfered with the radio communications of other systems, in violation of Sections 333 of the Act;

(f) To determine whether James A. Kay, Jr. has abused the Commission's processes in order to obtain cancellation of other licenses;

(g) 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;

(h) To determine if any of James A. Kay, Jr.'s licenses have automatically cancelled as a result of violations listed in subparagraph (c) pursuant to Sections 90.155, 90.157, 90.631 or 90.633 of the Commission's rules; and [sic]

10 FCC Rcd at 2064-65.

3. By *Memorandum Opinion and Order*, FCC 98M-94 (released July 15, 1998), issues

(b) and (f) were resolved in Kay's favor by summary decision. Similarly issue (d), with respect to Sections 90.629 and 90.627, was resolved in Kay's favor. *Id.* The order notes that the reference to Section 90.629 of the Commission's Rules should have been to 90.627. *Id.* (Section 90.627 of the Commission's Rules is still properly the subject of subparagraph 10(c).)

4. By *Memorandum Opinion and Order*, FCC 98M-15 (released February 2, 1998), the Presiding Judge added the following issues:

To determine, based on the findings and conclusions of Initial Decision FCC 97D-13 reached in WT Docket No. 97-56 concerning James A. Kay, Jr.'s (Kay) participation in an unauthorized transfer of control, whether Kay is basically qualified to be a Commission licensee.

To determine whether James A. Kay, Jr. misrepresented facts or lacked candor in presenting a Motion To Enlarge, Change, or Delete Issues that was filed by Kay on January 12, 1995, and January 25, 1995.

To determine whether in light of the evidence adduced under the aforementioned added issues whether James A. Kay, Jr. is qualified to hold a Commission license.

5. By *Order*, FCC 98-274 (released October 19, 1998), the Commission ordered the appointment of a new Administrative Law Judge to preside over this case. By *Order*, FCC 98M-122 (released October 30, 1998), Chief Judge Joseph Chachkin appointed himself to preside over the proceeding. The evidentiary admissions session was held on November 30, 1998. Hearing sessions were held in Washington, D.C., on December 21, 22, 23, 28, 29, and 30, 1998; and January 11, 12, 13, 14, 19, and 20, 1999. The record in this proceeding was closed on January 20, 1999. Tr. 2565.

6. In accordance with the requirements of Section 312 of the Communications Act of

1934, as amended, (the "Act") and paragraph 15 of the *Show Cause Order*, the Wireless Telecommunications Bureau (the "Bureau") has the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues.

## **II. PROPOSED FINDINGS OF FACT**

### **A. Background**

7. Kay became involved in the land mobile business in the 1982 to 1984 as he expanded his radio repair business. Tr. 860. Kay does business in his own name as well as in the name of Lucky's Two Way Radio (Lucky's) which provides commercial two way communications service to customers. Tr. 860. The primary business of Lucky's is the provision of repeater service. Tr. 861. Repeater service is the provision of communications service to customers who own their own two way radios, similar to cellular service providers who provide service to users who own their phones. Tr. 864.

8. Kay is the president and sole stockholder of Buddy Corp. and Oat Trunking Group. Tr. 860-63. Buddy Corp. d.b.a. Southland Communications sells and repairs two-way radios. Tr. 860-61. In 1994, Kay operated Stations KNBT299, WNYE761, WNYR424, WPF529, WNXL471, WPAD685, KRU576, WPCN239, WPCZ354, WPCG780, WNWB334, WNZS492, WPDB603 WPFH460, and WPCA891 licensed to Marc Sobel. WTB Exs. 340, p. 1, 341, 290, *see also* WTB Ex. 290 at 20-21 (wherein Kay admits that he runs various stations licensed to Marc Sobel). Kay operated Station WFP295 licensed to Jerry Gales pursuant to a management agreement. WTB Ex. 326, Tr. 1240. Kay operated Station WNXR890 licensed to

Vincent Cordaro pursuant to a management agreement. WTB Exs. 321, p. 5, 322, 323, Tr. 1273-80, 1290-91. Each agreement contractually obligates Kay to perform all management functions associated with the operation of the station(s) including control point operation. WTB Exs. 323, p. 2, 326, p. 2, 340, p. 2. Each licensee authorized Kay as its management agent to employ such persons as Kay deems necessary to maintain, operate and manage each station. At least in the case of Sobel and Gales, Kay had oral agreements to manage these stations prior to entering into written agreements. Tr. 1240, 1723-25.

### **B. Section 308(b) Issue**

9. In early 1994, the Commission began investigating the construction and loading of Kay's licensed facilities by sending Kay a letter dated January 31, 1994 (Commission inquiry letter). WTB Ex. 1. The Commission informed Kay that it had "received complaints questioning the construction and operational status of a number of [Kay's] licensed facilities." WTB Ex. 1, p. 1. Kay received the official Commission inquiry letter in early February, Tr. 865, and understood that the Commission was requesting certain information from him. Tr. 866. Kay forwarded the letter to his attorneys to respond. Tr. 2339-40.

10. The Commission inquiry letter directed Kay to provide information to determine his qualifications to remain a Commission licensee. WTB Ex. 1, p. 1. The letter stated that the request was being made pursuant to the authority of the Communications Act of 1934, as amended, and it specifically referenced 47 U.S.C. § 308(b). *Id.* The Commission inquiry letter cautioned Kay that failure to respond timely, completely, and truthfully could result in the

commencement of revocation proceedings. *Id.*

11. The Commission inquiry letter included several requests for information. The letter first requested a list of all call signs and licensee names of facilities owned or operated by Kay or by any company under which he did business. WTB Ex. 1, p. 1. The letter also directed Kay to identify which facilities on the list were constructed on United States Forest Service (USFS) land. *Id.* The Commission inquiry letter requested the date of the original grant of each call sign, the date the station was constructed and placed in operation, and the type of facility. *Id.* Next, the Commission inquiry letter directed Kay to provide copies of USFS permits relating to those facilities constructed and made operational on USFS land. *Id.* The Commission inquiry letter further directed Kay to explain, if necessary, why no permit was available for each station on USFS land that did not have a permit. WTB Ex 1, p. 2. The Commission inquiry letter directed Kay to provide a user list including the business address and contact person as well as the number of mobile units and control stations being operated for each station he listed in response to the request for call signs owned and operated. *Id.* The Commission inquiry letter also directed Kay to list the total number of units operated on each station and cautioned Kay that the number must be substantiated by business records. *Id.* Finally, the Commission inquiry letter directed Kay to furnish the requested information within 60 days of the date of the letter. *Id.*

12. This inquiry letter precipitated multiple exchanges of correspondence between Kay and the Commission over a period of many months, as described below. In the end, Kay flatly refused to provide the information requested by the Commission. Tr. 1035.

13. By letter, dated February 16, 1994, to the Commission, Kay requested written assurance that a substantive response to the inquiry letter would not be disclosed to any person who was not a Commission employee under any circumstance. WTB Ex 348, p.1. Further, Kay requested that submission of the requested information serve to immunize him against any Commission forfeiture action and any criminal prosecution. WTB Ex. 348, p. 2. Finally, Kay requested that the running of the sixty days be tolled while the Commission considered Kay's request for confidentiality and request for immunity. *Id.*

14. The Commission responded to Kay's correspondence by letter dated March 1, 1994. WTB Ex. 349, Tr. 1028-30. The letter addressed Kay's request for written assurance of confidentiality, immunity against forfeiture and immunity from prosecution. WTB Ex. 349, p. 1. The Commission indicated that Section 0.459 of the Commission's Rules provides a specific procedure for requesting confidentiality of documents, and Kay's request did not comply with that procedure. *Id.* The Commission further indicated that Kay should submit a request that complies with its rules if he desired to maintain the confidentiality of his submission. *Id.* The Commission also stated that Kay's request for immunity against forfeiture and immunity from criminal prosecution "is denied." *Id.* Finally, the Commission's March 1, 1994, letter concluded that the 60 day period for responding to the inquiry letter was tolled for twelve days, in accordance with Kay's request that it be tolled during the pendency of his confidentiality/immunity request. WTB Ex. 349, p. 2. Kay was not satisfied with this response from the Commission staff. Tr. 1028-30.

15. Thereafter, by letter, dated April 7, 1994, Kay informed the Commission of his

refusal to provide a list of licensees for whom he was operating stations. Kay rejected the Commission's request for this information because the information was, according to Kay, already in the Commission's possession." WTB Ex. 3, p. 1. For the same reason, Kay declined to provide a list of call signs of facilities he was operating. *Id.* Kay also argued that the request that he list the "type of facility" for each call sign was not sufficiently specific to be answerable. *Id.*, p. 2.

16. Kay also refused to provide any information or copies of USFS permits, asserting that the existence of permits is not within the Commission's jurisdiction. WTB Ex. 3, p. 2. Kay also asserted that neither the Communications Act nor the Commission's rules requires a USFS permit. *Id.* Kay also declined to provide any USFS permit information on the basis that it is not relevant to the administration of the Communications Act and not relevant to the determination of whether Kay is qualified to be a Commission licensee. *Id.*, p. 3. With respect to the Commission's request that Kay identify which of his facilities are located on USFS land, Kay suggested that the Commission should plot his coordinates on a map showing the boundaries of USFS land. WTB Ex. 3, pp. 1-2.

17. Kay further stated that the Commission does not require him to keep a record of his users' names, addresses etc., and therefore the Commission has no authority to request such information. WTB Ex. 3, pp. 4-5. In addition, Kay stated that because the Commission had not given him the written assurance he desired that his submission would be held in strict confidence, he declined to provide *any* information to the Commission regarding his end users. *Id.*

18. Kay also stated in his response that because the Commission did not provide him with the assurance he desired that "he will be immune to criminal prosecution based on the information which it has requested," he would not provide the information requested by the Commission in its January 31, 1994, inquiry letter. WTB Ex. 3, p. 5. In support, Kay referenced the rights guaranteed by the Fifth Amendment to the United States Constitution. *Id.*

19. Kay also objected that the Commission's request for information was unreasonably burdensome in light of the local conditions in the Los Angeles market. WTB Ex. 3, p. 6. Kay stated that although none of his radio facilities had suffered damage from the Northridge earthquake, Kay's office and home were damaged. *Id.* As a result, Kay was in the process of acquiring a new home. *Id.* He also noted that due to financial conditions Kay had to spend one full day each week collecting delinquent bills. *Id.* As a result, Kay declined to provide any information requested by the Commission, stating that he did not have the time or employee resources to fulfill the Commission's informational request. *Id.* Kay also filed a request for confidentiality and copyright protection. WTB Ex. 2.<sup>1</sup>

20. By letter, dated May 11, 1994, the Commission again directed Kay to provide the information requested in its January 1994 inquiry letter. WTB Ex. 4. The Commission made this request in the context of processing several pending applications that Kay had filed. WTB Ex. 4. The May 11, 1994, letter included a copy of the earlier inquiry letter. *Id.* The May 11,

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<sup>1</sup> In the request for confidentiality, Kay asserted that the Commission recently disclosed to Kay confidential data submitted by Joe Hiram Trucking, Inc. in a finders preference matter, and that therefore the Commission could not be trusted with confidential information. *Id.*, pp. 2-3. A subsequent letter that Kay received from the Commission explained that the Joe Hiram Trucking information had been disclosed with Hiram's permission and that an attorney, Kate Kaercher, Esq. in Brown & Schwaninger's office was fully aware that such permission had been given. WTB Ex. 6, p. 2.

1994, letter provided Kay with an additional 14 days to provide the requested information. *Id.*, pp.2-3. The Commission's May 11, 1994, letter indicated that if Kay intended to claim copyright protection to prevent the photocopying of his response, he should submit 50 copies of the response. *Id.*, p. 1. Kay testified that he was "totally incredulous" at this request, and he claimed that the Commission was denying his request for confidentiality. Tr. 2344-2345.

21. Kay responded by letter dated May 17, 1994, that he was puzzled by the Commission's further request in that it was clear that the Commission had received Kay's April 7, 1994, response. WTB Ex. 5, p. 1. Kay further asserted that Section 308(b) of the Act requires applicants to provide all information that the Commission shall prescribe by regulation. *Id.*, p. 2. Because the inquiry letter sought for information that Kay claimed was not prescribed by regulation, Kay again declined to respond. *Id.*, p. 2. Kay requested that the Commission defer action concerning its demand for information until Kay could prosecute a Freedom of Information Act action in District Court wherein Kay sought to obtain copies of the complaints that had precipitated the Commission's inquiry. *Id.*, p. 3. Kay did not indicate whether he would provide additional information after prosecuting his lawsuit. *Id.*

22. Shortly thereafter, the Commission directed a further letter to Kay, dated May 20, 1994. WTB Ex 6, Tr. 923. The Commission advised Kay that his April 7, 1994 response was inadequate because it provided none of the requested information. WTB Ex. 6, p. 1. The Commission clearly informed Kay that it would not allow his commercially sensitive information to be classified as routinely available for public inspection. *Id.* The Commission also explained that Congress, in adopting Section 308(b), granted the Commission authority to

require such other information as the Commission may require to determine if an application should be granted or a license revoked. *Id.*, p. 2. The Commission stated that its request for information was based on complaints it had received alleging that stations licensed to Kay on USFS lands did not have permits. *Id.* It further explained that there was a presumption that those without permits were not constructed. *Id.* The letter also explained that the complaints alleged that there were discrepancies between the loading reported to the Commission and the loading reported to the USFS. *Id.* The Commission's May 20, 1994, letter clarified that "type of facility" refers to the radio service (i.e. YX, GX, YB, GB etc.) *Id.*, p. 3. The letter also extended Kay's response date to June 3, 1994. *Id.*, pp. 2-3.

23. On May 25, 1994, Kay directed a letter to the Commission requesting that it narrow its investigation to only the information necessary to investigate particular complaints. WTB Ex. 7. Alternatively, Kay sought to stay the demand until he could challenge the Commission's decision refusing to provide the complaints filed against him in response to his FOIA request. WTB Ex. 7, p. 3, Tr. 928.

24. The Commission responded by letter on May 26, 1994. WTB Ex. 8, Tr. 929. In its letter to Kay, the Commission declined to narrow the focus of its investigation. WTB Ex. 8. The Commission stated that the deadline for submitting the requested material remains June 3, 1994. *Id.*

25. Kay responded by letter on May 26, 1994. WTB Ex. 9. In the response, he requested the Commission to identify the call sign information regarding Kay's operations that the Commission did *not* have. *Id.*, p. 1. With respect to USFS permits, Kay again objected that

the information sought by the Commission was not relevant to whether or not Kay was qualified to be a licensee. *Id.*, p. 2. Kay also objected that the Commission was threatening to hold a revocation hearing, and that the Communications Act did not contemplate commencing a hearing as a sanction. *Id.*, p. 3. Kay's letter also asserted that if a hearing were commenced, Kay would move to dismiss the hearing. *Id.*, p. 3. Kay stated that his business records at the time substantiated the operation of 7000 mobile and control stations. *Id.* Finally, Kay asked the Commission to reconsider staying the deadline until after Kay could prosecute his FOIA litigation. *Id.*, p. 4.

26. The Commission responded by letter on May 27, 1994. WTB Ex. 10, Tr. 930-31. The Commission explained determining the call sign information it did *not* have would be a daunting if not impossible task. WTB Ex. 10, p. 1. The Commission declined to give any further explanation of the relevance of USFS permits. *Id.* The Commission assured Kay that it had no intention of disclosing Kay's proprietary business information to anyone. *Id.*, p. 1. Finally, the Commission indicated that it needed the number of mobile units operating on individual stations rather than the aggregate number (7000). *Id.*, pp. 1-2.

27. On June 3, 1994, Kay submitted yet another responsive letter. WTB Ex. 11, p. 1. Kay attested to the accuracy of the facts in the responsive letter. *Id.*, p. 7, Tr. 932. In this letter, Kay informed the Commission that he holds licenses in his own name. WTB Ex. 11, p. 1. He further represented to the Commission that he owned "an interest" in two closely held corporations Buddy Corp. and Oat Trunking Group, Inc. *Id.* Kay did not inform the Commission that he was the sole owner of either Buddy Corp. or Oat Trunking Group, Inc. *Id.*

Kay stated that the construction and loading of the stations licensed to the two corporations "do not affect Kay's eligibility to hold any other license." *Id.*

28. Kay also represented that he does not operate any station of which either he or the two above named corporations is not the licensee. WTB Ex. 11, p. 1. Kay informed the Commission that he leased equipment to persons licensed for community repeater operation. *Id.* Kay stated that because the Commission had records of all call signs and licensee names of stations which are owned or operated by Kay, "we trust that this information is fully responsive to the Commission's request for the call signs and licensee names of all facilities which are owned or operated by Kay or by any company under which he does business." WTB Ex. 11, p. 2.

29. Kay also stated that he did not believe that the USFS documents were relevant to whether he was qualified to be a Commission licensee. He, therefore, refused to provide the information. WTB Ex. 11, pp. 2-3.

30. With respect to the dates that stations were granted, constructed and placed in operation, Kay explained that the Commission did not require him to keep such information, and therefore he would not provide it. WTB Ex. 11, pp. 3-4. With respect to the user information that the Commission had requested, Kay advised that because he was not "convinced" the Commission would keep his proprietary business information confidential, the Commission's request was not a reasonable exercise of its authority, and declined to produce the information. *Id.*, p. 5. Kay again took issue with the Commission's refusal to provide him with the complaints filed against him or to provide him immunity from criminal prosecution. *Id.*, p. 6.

31. Kay failed to list the call signs of stations he operated and did not inform the Commission that he operated stations on behalf of Commission licensees Jerry Gales, Vincent Cordaro, and Marc Sobel. WTB Ex. 11. Kay managed Gales' station because Gales was not physically able to go up on mountaintops and perform the work necessary to install and operate repeaters himself. Tr. 1243.

32. Kay does not keep station records including the date transmitters are installed and measurements taken as required by Sections 90.443 and 90.215 of the Commission's Rules. Tr. 954-57. Kay did, however, keep a file of his 800A letters regarding the dates his 800 MHz stations were constructed. Tr. 958. The FCC collects information regarding construction of 800 MHz stations by sending FCC Form 800A letters to licensees after their construction deadline. Tr. 2367-68.

33. The Commission directed a response to Kay on June 10, 1994. WTB Ex. 12, Tr. 946-47. The Commission stated that it would keep all user information confidential. WTB Ex. 12, p. 1. The Commission also repeated the request for end-user information as of January 1, 1994; significantly, however, the Commission stated that a list for any day subsequent to that date that was convenient for Kay would be acceptable. *Id.* The Commission also repeated the request for full responses to the other parts of the January 31, 1994, inquiry letter. *Id.* Finally, the Commission stated that the date for submitting an end user list was extended until July 1, 1994. *Id.*

34. Kay responded by letter dated June 17, 1994, with a request that the Commission extend the time to respond until after the resolution of pending FOIA litigation regarding

disclosure of complaints against Kay. WTB Ex. 13, Tr. 948.

35. The Commission directed a further letter to Kay on June 22, 1994. WTB Ex. 14. The letter denied his request to extend the time to respond due to pending FOIA litigation. WTB Ex. 14, p. 1. The letter stated that the Commission had located and released more than one thousand documents in response to his FOIA requests. *Id.*, p. 2. The letter also suggested that instead of pursuing that FOIA litigation and complaints against the employees investigating him, "Kay's energies would be better spent if he took the time to fully respond to our initial request for information." *Id.*

36. Kay responded by letter dated June 30, 1994 (WTB Ex. 15), that despite the Commission's statement that the user list would be kept confidential, Kay was not "free from doubt" that the FOIA rules would allow the Commission to make such an assurance "in advance of receiving and analyzing the specific information at issue." *Id.*, p. 2. Kay further informed the Commission in no uncertain terms:

that there is no date subsequent to January 1, 1994, for which the submission of the requested information would be convenient. We trust that that report terminates the Commission's request at Items five and six of its January 31, 1994 letter."

*Id.*, p. 2. Kay also complained that the Commission had denied his request for immunity and initially denied his request for confidentiality. *Id.* Kay declared under penalty of perjury that the response, to the Commission's request for information was true and correct. *Id.*, p. 4.

37. Throughout this period, Kay routinely made backup tapes of his database, which included the names and addresses of customers, as well as the number of mobiles operated on each mountaintop. Tr. 1087-90, 1444. Kay also routinely copied over, and therefore erased

archived information from, these backup tapes. Tr. 1089-92. Kay did not retain any record of his database during the Commission's investigation; Kay and his staff routinely overwrote the loading data and system configurations in his computer system. Tr. 1087-89. Kay could easily have saved backup tapes containing much of the requested information. Tr. 1089-92. Kay's computer programmer testified that Kay's database files could have been easily copied onto floppy disks. Tr. 1422. The database contained customer name and total mobiles during all relevant times. Tr. 1421-22. The number of total mobiles operating at each site was a feature added either when Kay was still operating the "Xenix or about that time." Tr. 1421.

38. Several weeks prior to Kay receiving the Commission inquiry letter, on January 17, 1994, the Northridge earthquake damaged Kay's office. Tr. 1416, 2340-41. Kay's computer system was damaged. Tr. 1038. However, Barbara Ashauer, the person responsible for billing activities in Kay's office, Tr. 1665-66, testified that Kay's billing of customers was only interrupted during power outages. Tr. 1688-89. Craig Sobel, Kay's computer consultant, did not recall performing any work for Kay immediately after the earthquake. Tr. 1417. Craig Sobel converted Kay's computer system from the XENIX operating system to a DOS operating system in May 1994. Tr. 1397-1398, 1417. At that time, Craig Sobel noted there was some corruption in one of the computer files that held Kay's customer information. Tr. 1417-1418. The corrupt files related to the billing history of Kay's customers. Tr. 1443. Nonetheless, that corruption would not have prevented Kay from billing his customers. Tr. 1442-1443. Moreover, Kay filed numerous FCC applications during the period February 15, 1994, through July 7, 1994. *See e.g.* WTB Exs. 35, p.1, 41, p. 1, 83, p. 1, 91, p. 1, 107, p. 1 and 192, p. 1. Kay used a specialized

computer program to prepare applications during this period. WTB Ex. 328, pp. 74-75. The only references to the earthquake in Kay's correspondence to the Commission were (1) a general reference to damage to Kay's home and office, and (2) a statement that economic disruption caused by the earthquake forced Kay to spend more time collecting from customers who did not pay their bills. WTB Ex. 3, p. 6.

39. During 1994, Kay steadfastly refused to provide requested loading information to the Commission. *See* paras. 12-36, *supra*. In the Spring of 1995, after Kay's licenses were designated for revocation in the instant hearing proceeding, Kay finally produced some loading information in response to WTB Interrogatory No. 4; this was over a year after the Commission had first requested such information in the January 31, 1994, inquiry letter. WTB Ex. 347, Tr. 1036-37. Those records that Kay produced were printouts of Kay's customer maintenance screens. Tr. 1399. Craig Sobel wrote a program in March 1995 that allowed all of the reports to be printed automatically. Tr. 1400. Prior to that time, Kay or his employees could have printed the reports one at a time. *Id.*

40. In November 1995, Kay finally provided information regarding the call signs that he was utilizing. WTB Ex. 19, Tr. 986-87. When those records were produced, Kay represented, "These reports are generated as of November 9, 1995, and represent each customer's current repeater system configuration." WTB Ex. 19, p. 1. Kay also represented, "Information is kept by repeater customer name in current configuration only." WTB Ex. 19, p. 2. In fact, however, the customers in the list constituted *all* customers that were in Kay's computer system, regardless of whether they were actually operating in November 1995. Tr. 987. Normally, when a

customer was “deleted” from Kay’s computer system, the customer information was not deleted from the system, but a “delete flag” was set up marking that particular customer. Tr. 1411-1412. In printing these reports, Craig Sobel intentionally removed the delete flags so that the reports would print all customers in the system. Tr. 1412. Craig Sobel also wrote a program that would facilitate mass printing of the documents. Tr. 1413. Prior to that time, Kay or his employees could have printed these reports without the deleted customers. *Id.* Mr. Sobel “thinks” such reports could have been printed in May 1994. Tr. 1414. Once the reports were printed, Kay then matched up call signs with frequency and site records and wrote the call signs on the reports. Tr. 987. That process took Kay “the better part of a day, maybe two.” *Id.*

41. Kay maintained a folder containing his Forest Service permits. Tr. 2416. Occasionally, there was a permit that was misplaced and, therefore, was not in the Forestry permit folder. Tr. 2416-17. The permits in the folder were the permits produced to the Bureau after the case was designated for hearing. *Id.* Notwithstanding his refusal to produce permits in response to the Commission’s inquiry letter, Kay, in his direct case, offered several Forest Service permits as evidence that he had constructed stations in a timely manner. *See* Kay Exs.14, 17, 19, and 26.

42. When, in response to discovery, Kay organized copies of his licenses for inspection by the FCC, as required by the Section 90.437 of the Commission’s Rules, it took Kay only several hours to organize and copy his station licenses. Tr. 2351-52.

43. Kay claimed at the hearing that the Commission letter of inquiry had required him to produce almost all of the supporting documentation that he later produced in discovery. Tr.1030-

31. However, the Commission letter of inquiry was seeking a **list** of end users for any day that was convenient to Kay after January 1, 1994. WTB Ex. 12, p. 1. In the correspondence responding to the Commission inquiry letter, Kay wrote, "Mr. Kay appreciates the Commission's apparent recognition of the practical problems which the Commission's initial massive request for information would impose on him and appreciates the Commission's resulting modification of its request." Kay Ex. 15, p. 2. He did not assert that the Commission's modified request was unduly burdensome. *See* WTB Ex. 15. Kay refused to provide a list of his end users, complaining that the Commission denied his request for immunity. WTB Ex. 15, p. 3.

### **C. Construction and Operation Requirements Issue**

#### **1. Loading**

44. Prior to designation of this matter for hearing, Kay did not know how many mobiles are operating under each of his authorizations. WTB Ex. 16, p. 2. His records are incomplete. Tr. 1006-07. Despite the fact that he operates hundreds of sites subject to loading requirements, he kept no record of which mobile units were operating on each call sign. WTB Ex 16, pp. 2-3. In fact, it took him a day to figure out which frequency/site pairs in his records goes with each license. Tr. 986-87.

45. After this matter was designated in December 1994, Kay produced loading records for March 1995, WTB. Ex. 347, and for November 1995. WTB Ex. 19. The March customer print screens identify the customers and the number of mobile units operating on each frequency at each site. WTB Ex. 347, Tr.994-98. The March records do not indicate which call sign

corresponds to each site. WTB Ex. 347. The November 1995 records indicate which customers operate or operated on particular frequencies from particular sites and the number of mobile units operated by each customer. WTB Ex. 19. The records also indicate which call signs were associated with particular site frequency pairs. WTB. Ex. 19, Tr. 986-87.

46. Kay operates systems licensed as trunked systems as well as Spillman type LTR trunked systems. Although the Spillman type LTR trunked systems function like trunked systems, they are licensed as conventional systems. WTB Ex. 346; Tr. 1137-39. On both the customer print screens and the loading records provided in November 1995, customers operating on either type of trunked system appear as operating on the frequencies 500 MHz or 800 MHz, depending on whether it is a system in the 470-512 MHz band or the 800 MHz band. Tr. 1137. Kay first told the Bureau in his November 1995 submission which call signs these customers were operating on. Tr. 986-87. Kay first explained at his deposition in December, 1997, that the groups of conventional call signs in WTB Ex. 19 with frequency designations of 500 MHz or 800 MHz represent LTR trunked systems. Tr. 1139.

47. Kay explained that where customers are listed in the November 1995 records, but no customer print screen was provided in March 1995, the most likely explanation was that the customer was a new customer who began service between March and November. Tr. 1120-21.

48. Kay did not produce any record of end user operation for the following 17 stations: WIK310, WIK331, WIK376, WIL235, WIL256, WIL342, WIL350, WIL392,<sup>2</sup> WIL441, WIL625, WIL653, WIL659, WIL665, WNMY773, WNQK959, WNYQ437, and WPBW517.

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<sup>2</sup> Kay testified that this call sign is physically the same piece of hardware as WIJ712. Tr. 1099. Station WIJ712 is not loaded to the level required by that authorization, *see* para. 65 *infra.*, and no loading was reported with respect to the loading authorized by this license.

WTB Ex. 19. These stations are authorized to operate the following number of mobile units:

Call sign	Authorized mobile units	WTB Ex.
WIK310	78	24 at 4.
WIK331	60	26 at 4.
WIK376	87	27 at 4.
WIL235	6	28 at 4.
WIL256	12	29 at 4.
WIL342	77	30 at 4.
WIL350	27	33 at 4.
WIL372	21	34 at 4.
WIL392	18	35 at 4.
WIL441	10	38 at 4.
WIL625	3	41 at 4.
WIL653	19	44 at 4.
WIL659	90	47 at 4.
WIL665	7	50 at 4.
WNMY773	72	53 at 4.
WNQK959	18	54 at 5.
WNYQ437	72	55 at 4.
WPBW517	72	56 at 4.
Shortfall	749	

The total number of mobile units authorized by these licenses is 749. Notwithstanding Kay's failure to report any loading on these stations, Kay testified that with respect to these stations he had mobile units operating on other stations using the same frequencies who may be operating on these frequencies or at least would be allowed to operate on these stations if they requested to do so. For example, Kay testified that if they did not have access to the repeater in their radios, we could have given it to them. Tr. 1077-78. In another case with respect to Station WIL659, Kay testified that the repeater was never constructed, but his customers using the same frequency in other areas, "probably" used their radios in this station service area. Tr. 1103.

## 2. Loading of Stations operated in the Conventional Manner

49. Kay operated the following stations in the conventional manner, yet reported loading less than the number of mobiles authorized as of March 1995, and November 1995.

50. Kay's license for Station KJV843 was granted on January 6, 1993. WTB Ex. 57 p. 1.

The license authorizes the operation of 180 mobiles on 472.2125 MHz at four locations:

Lukens, Oat Mountain, Castro Peak, Signal Hill, and Sunset Peak. WTB Ex. 57 pp. 3-4.

Notwithstanding, Kay's November 1995, business records list a total of 71 mobiles on the

frequency. WTB Ex. 58 pp. 1-5. Of these, one customer, Cust. No. 321, Um, Eun Sup,

discontinued service on June 30, 1994. WTB Ex. 59 p. 10. Kay's customer records only

substantiate a total of 56 mobiles on the frequency as of March 1995 and a total of 69 mobiles on

the frequency as of November 1995. WTB Ex. 59 p. 1-10; WTB Ex. 58 p. 1-5.

51. Kay's license for Station WEC934 was granted on October 18, 1991. WTB Ex. 60 p.

1. The license authorizes operation of 71 mobiles on 507.6875 MHz at Mount Lukens and Oat Mountain. WTB Ex. 60 p. 3-4. Kay's November, 1995, business records list a total of 220 mobiles on the frequency. WTB Ex. 61 p. 1. Of these, no customer records, as of March 1995, were provided for Bell Cab Co.'s 200 mobiles. WTB Ex. 62, 347. The customer records substantiate only 33 mobiles operating on this call sign as of March 1995. WTB Ex. 62.

52. Kay's license for Station WIE974 was granted on November 20, 1991. WTB Ex.63 p.

1. The license authorizes operation of 85 mobiles on 508.9125 MHz at Mount Lukens and Oat Mountain. WTB Ex. 63 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 68 mobiles on the frequency. WTB Ex. 64 p. 1. Of these, several customers discontinued service before November 1995. Cust. No. 1051, Design Solution, discontinued service on May 31, 1994. WTB Ex. 65 p. 2. Cust. No. 691, Kaiser Foundation Hospitals, discontinued service on March 3, 1994. WTB Ex. 65 p. 4. Cust. No. 558, Qualified Circulation Corp., discontinued service on September 30, 1994. WTB Ex. 65 p. 5. Kay's customer records only substantiate a total of 25 mobiles on the frequency as of March 1995 and a total of 28 mobiles on the frequency as of November 1995. WTB Ex. 65 p. 1-7; WTB Ex. 64 p. 1.

53. Kay's license for Station WIF759 was granted on January 2, 1990. WTB Ex. 66 p. 1.

The license authorizes operation of 47 mobiles on 472.9375 MHz at Mount Lukens and Sunset Peak. WTB Ex. 66, p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 12 mobiles on the frequency. WTB Ex. 67 p. 1. Of these, two customers discontinued service before November 1995. Cust. No. 785, Alfa Fox Towing, discontinued service on March 3, 1994. WTB Ex. 68, p. 1. Cust. No. 855, Mid City Taxi, discontinued service on December 31,

1993. WTB Ex. 68, p. 2. Kay's customer records only substantiate a total of 2 mobiles on the frequency as of March 1995 and a total of 2 mobiles on the frequency as of November 1995.

WTB Ex. 68, p. 1-3; WTB Ex. 67, p. 1.

54. Kay's license for Station WIH315 was granted on November 29, 1990. WTB Ex. 69 p. 1. The license authorizes operation of 90 mobiles on 508.2375 MHz at Mount Lukens and Oat Mountain. WTB Ex. 69 p. 3-4. Notwithstanding, Kay's customer records only substantiate a total of 20 mobiles on the frequency as of March 1995 and a total of 20 mobiles on the frequency as of November 1995. WTB Ex. 71 p. 1-2; WTB Ex. 70 p. 1.

55. Kay's license for Station WIH339 was granted on January 24, 1994. WTB Ex. 72 p. 1. The license authorizes operation of 72 mobiles on 507.7125 MHz at Mount Lukens, Sierra Peak and Oat Mountain. WTB Ex. 72 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 19 mobiles on the frequency. WTB Ex. 75 p. 1. Of these, Cust. No. 1046, Scovel's Towing, discontinued service on March 31, 1993. WTB Ex. 76 p. 3. Kay's customer records only substantiate a total of 15 mobiles on the frequency as of March 1995 and a total of 15 mobiles on the frequency as of November 1995. WTB Ex. 76 p. 1-3; WTB Ex. 75 p. 1.

56. Kay's license for Station WIH868 was granted on July 31, 1991. WTB Ex. 77 p. 1. The license authorizes operation of 58 mobiles on 471.9375 MHz at Mount Lukens, Sierra Peak and Sunset Peak. WTB Ex. 77 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 40 mobiles on the frequency. WTB Ex. 78 p. 1. Of these, Cust. No. 727, Service Office Products, Inc., discontinued service on September 30, 1994. WTB Ex. 79 p. 2. Kay's customer records only substantiate a total of 26 mobiles on the frequency as of March 1995 and a

total of 26 mobiles on the frequency as of November 1995. WTB Ex. 79 p. 1-2; WTB Ex. 78 p. 1.

57. Kay's license for Station WIH886 was granted on September 29, 1992. WTB Ex. 83 p. 1. The license authorizes operation of 66 mobiles on 508.2875 MHz at Mount Lukens and Oat Mountain. WTB Ex. 83 p. 3-4. Kay's November 1995, business records list a total of 212 mobiles on the frequency. WTB Ex. 86 p. 1. Of these, no customer records were provided for Bell Cab Co.'s 200 mobiles. WTB Exs. 87, 347. Bell Cab's 200 mobiles were counted at Lukens above with respect to Station WEC 934. Kay's customer records substantiate a total of 16 mobiles operating on this call sign as of March 1995. WTB Ex. 87 p. 1-4.

58. Kay's license for Station WIH946 was granted on February 22, 1991. WTB Ex. 88 p. 1. The license authorizes operation of 66 mobiles on 471.8875 MHz at Sierra Peak. WTB Ex. 88 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 38 mobiles on the frequency. WTB Ex. 89 p. 1-2. Of these, Cust. No. 182, Fargo Construction discontinued service on December 31, 1993. WTB Ex. 90 p. 3. Kay's customer records only substantiate a total of 32 mobiles on the frequency as of March 1995 and a total of 35 mobiles on the frequency as of November 1995. WTB Ex. 90 p. 1-5; WTB Ex. 89 p. 1-2.

59. Kay's license for Station WII621 was granted on August 21, 1990. WTB Ex. 91 p. 1. The license authorizes operation of 45 mobiles on 508.9625 MHz at Loop Canyon and Oat Mountain. WTB Ex. 91 p. 3-4. Notwithstanding, Kay's customer records only substantiate a total of 17 mobiles on the frequency as of March 1995 and a total of 18 mobiles on the frequency as of November 1995. WTB Ex. 93 p. 1-4; WTB Ex. 92 p. 1-2.

60. Kay's license for Station WII787 was granted on March 25, 1993. WTB Ex. 97 p. 1. The license authorizes operation of 78 mobiles on 508.3125 MHz at Mount Lukens and Oat Mountain. WTB Ex. 97 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 31 mobiles on the frequency. WTB Ex. 100 p. 1-2. Of these, two customers discontinued service before November 1995. Cust. No. 604, A H R Signs, Inc., discontinued service on December 31, 1994. WTB Ex. 101 p. 1. Cust. No. 174, Community Lock & Key, discontinued service on March 31, 1994. WTB Ex. 101 p. 2. Kay's customer records only substantiate a total of 21 mobiles on the frequency as of March 1995 and a total of 26 mobiles on the frequency as of November 1995. WTB Ex. 101 pp. 1-6, WTB Ex. 100 pp. 1-2.

61. Kay's license for Station WII874 was granted on March 25, 1993. WTB Ex. 102 p. 1. The license authorizes operation of 60 mobiles on 472.2875 MHz at Mount Lukens, Oat Mountain and Castro Peak. WTB Ex. 102 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 43 mobiles on the frequency. WTB Ex. 105 p. 1-3. Of these, several customers discontinued service before November 1995. Cust. No.190, Appliance Service Center, discontinued service on June 30, 1994. WTB Ex. 106 p. 1. Cust. No. 117, Harper Pools, discontinued service on June 30, 1994. WTB Ex. 106 p. 4. Cust. No. 313, Pes-Co Exterminators Corp., discontinued service on June 30, 1994. WTB Ex. 106 p. 9. Kay's customer records only substantiate a total of 28 mobiles on the frequency as of March 1995 and a total of 32 mobiles on the frequency as of November 1995. WTB Ex. 106 pp. 1-10, WTB Ex. 105 pp. 1-3.

62. Kay's license for Station WII905 was granted on October 18, 1991. WTB Ex. 107 p. 2. The license authorizes operation of 79 mobiles on 471.8625 MHz at Mount Lukens and Oat

Mountain. WTB Ex. 107 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 40 mobiles on the frequency. WTB Ex. 108 p. 1. Of these, two customers discontinued service before November 1995. Cust. No. 972, Consolidated Commercial Maint., discontinued service on May 31, 1994. WTB Ex. 109 p. 2. Cust. No. 625, M & M Management, discontinued service on March 31, 1994. WTB Ex. 109 p. 5. Kay's customer records only substantiate a total of 30 mobiles on the frequency as of March 1995 and a total of 30 mobiles on the frequency as of November 1995. WTB Ex. 109 p. 1-9; WTB Ex. 108 p. 1.

63. Kay's license for Station WIJ644 was granted on June 1, 1993. WTB Ex. 113 p. 1. The license authorizes operation of 84 mobiles on 471.9125 MHz at Mount Lukens and Oat Mountain. WTB Ex. 113 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 55 mobiles on the frequency. WTB Ex. 116 p. 1-2. Of these, several customers discontinued service before November 1995. Cust. No. 699, A and K Valve, discontinued service on December 31, 1993. WTB Ex. 117 p. 1. Cust. No. 650, ABC Shopping Cart Service, discontinued service on February 28, 1994. WTB Ex. 117 p. 2. Cust. No. 406, Dial Courier, discontinued service on December 31, 1993. WTB Ex. 117 p. 4. Cust. No. 239, Kye-Ok Chan, discontinued service on September 30, 1993. WTB Ex. 117 p. 7. Cust. No. 949, Packard Bell, discontinued service on September 30, 1994. WTB Ex. 117 p. 8. Kay's customer records only substantiate a total of 19 mobiles on the frequency as of March 1995 and a total of 26 mobiles on the frequency as of November 1995. WTB Ex. 117 p. 1-10; WTB Ex. 116 p. 1-2.

64. Kay's license for Station WIJ700 was granted on September 1, 1993. WTB Ex. 118 p. 1. The license authorizes operation of 67 mobiles on 471.1625 MHz at Mount Lukens and Oat

Mountain. WTB Ex. 118 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 51 mobiles on the frequency. WTB Ex. 119 p. 1. Of these, no customer records, as of March, 1995, were provided for Yoon Huan Kim's 3 mobiles. WTB Ex. 120 p. 1-2, 347. Kay's customer records only substantiate a total of 48 mobiles as of March 1995 on the frequency and 51 as of November. WTB Exs. 119, p. 1, 120 p. 1-2.

65. Kay's license for Station WIJ712 was granted on June 25, 1992. WTB Ex. 121 p. 1. The license authorizes operation of 77 mobiles on 471.1875 MHz at Mount Lukens and Oat Mountain. WTB Ex. 121 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 48 mobiles on the frequency. WTB Ex. 122 p. 1-2. Of these, one customer discontinued service before November 1995. Cust. No. 936, Carlos Rodriguez Courier, discontinued service on October 19, 1993. WTB Ex. 123 p. 2. Kay's customer records only substantiate a total of 38 mobiles on the frequency as of March 1995 and a total of 45 mobiles on the frequency as of November 1995. WTB Ex. 123 p. 1-7; WTB Ex. 122 p. 1-2.

66. Kay's license for station WIJ893 was granted on November 7, 1989. WTB Ex. 124 p. 1. The license authorizes operation of 162 mobiles on 507.8875 MHz at Oat Mountain, Sunset Peak, and Castro Peak. WTB Ex. 124 p. 3-4. Kay's customer records only substantiate a total of 83 mobiles on the frequency as of March 1995 and a total of 83 mobiles on the frequency as of November 1995. WTB Ex. 126 p. 1-5; WTB Ex. 125 p. 1-3.

67. Kay's license for station WIK208 was granted on January 8, 1992. WTB Ex. 135 p. 1. The license authorizes operation of 90 mobiles on 472.7125MHz at Rasnow Peak and South Mountain. WTB Ex. 135 p. 3-4. Notwithstanding, Kay's November 1995, business records list a

total of 25 mobiles on the frequency. WTB Ex. 136 p. 1. Of these Cust. No. 613, Wambold Furniture, discontinued service on June 30, 1991. WTB Ex. 137 p. 1. Kay's customer records establish that no mobiles were being used as of March 1995, and no mobiles were being used as of November 1995 on the frequency. WTB Ex. 137 p. 1; WTB Ex. 136 p. 1.

68. Kay's license for Station WIK216 was granted on October 19, 1993. WTB Ex. 138 p. 1. The license authorizes operation of 90 mobiles on 508.1625 MHz at Sierra Peak and Pleasance Peak. WTB Ex. 138 p. 3-4. Notwithstanding, Kay's November, 1995, business records list a total of 6 mobiles on the frequency. WTB Ex. 141 p. 1-2. Of these, Cust. No. 646, Allstate Lock and Key discontinued Service on June 30, 1994, and Cust. No. 1154, JDS Construction, discontinued service on October 31, 1994. WTB Ex. 142 pp. 2, 5. Kay's customer records substantiate a total of 27 mobiles on the frequency as of March 1995 and a total of 4 mobiles on the frequency as of November 1995. WTB Ex. 142 p. 1-6; WTB Ex. 141 p. 1-2.

69. Kay's license for Station WIK270 was granted on November 20, 1991. WTB Ex. 143 p. 1. The license authorizes operation of 85 mobiles on 508.9125 MHz at Sierra Peak. WTB Ex. 143 p. 3-4. Kay's November 1995, business records list zero mobiles on the frequency. WTB Ex. 144 p. 1. Kay's customer records indicate that after September 30, 1994, the date that Qualified Circulation Corp. stopped receiving service, there were zero mobiles on the frequency. WTB Ex. 145 p. 1.

70. Kay's license for Station WIK294 was granted on November 18, 1993. WTB Ex. 146 p. 1. The license authorizes operation of 69 mobiles on 472.9125 MHz at Mount Lukens and Oat Mountain. WTB Ex. 146 p. 3-4. Kay's November 1995, business records list a total of 11

mobiles on the frequency. WTB Ex. 149 p. 1. Of these, Cust. No. 844, Alpha Group Security, discontinued service on September 30, 1994. WTB Ex. 150 p. 1. Kay's customer records only substantiate a total of 2 mobiles on the frequency as of March 1995 and a total of 2 mobiles on the frequency as of November 1995. WTB Ex. 150 p. 1-2; WTB Ex. 149 p. 1.

71. Kay's license for Station WIK303 was granted on August 21, 1991. WTB Ex. 151 p. 1. The license authorizes operation of 70 mobiles on 508.1375 MHz at Mount Lukens, Sunset Peak and Signal Hill. WTB Ex. 151 p. 3-4. Kay's November 1995, business records list a total of 18 mobiles on the frequency. WTB Ex. 152 p. 1-2. Of these, Cust. No. 986, Lomita Gasoline Co., Inc., discontinued service on September 30, 1994. WTB Ex. 153 p. 2. Kay's customer records only substantiate a total of 10 mobiles on the frequency as of March 1995 and a total of 10 mobiles on the frequency as of November 1995. WTB Ex. 153 p. 1-4; WTB Ex. 152 p. 1-2.

72. Kay's license for Station WIK332 was granted on January 24, 1991. WTB Ex. 157 p. 1. The license authorizes operation of 76 mobiles on 471.8625 MHz at Sierra Peak. WTB Ex. 157 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 16 mobiles on the frequency. WTB Ex. 158 p. 1. Of these, Cust. No. 677, Enforcement Protection, discontinued service on December 31, 1993, and Cust. No. 972, Consolidated Commercial Maintenance, discontinued service on May 31, 1994. WTB Ex. 159 pp. 3-4. Kay's customer records only substantiate a total of 14 mobiles on the frequency as of March 1995 and a total of 8 mobiles on the frequency as of November 1995. WTB Ex. 159 p. 1-5; WTB Ex. 158 p. 1.

73. Kay's license for Station WIK373 was granted on July 29, 1992. WTB Ex. 160 p. 1. The license authorizes operation of 120 mobiles on 508.2625 MHz at Mount Lukens, Oat

Mountain and South Mountain. WTB Ex. 160 p. 3-4. Kay's customer records only substantiate a total of 51 mobiles on the frequency as of March 1995 and a total of 51 mobiles on the frequency as of November 1995. WTB Ex. 162 p. 1-7; WTB Ex. 161 p. 1.

74. Kay's license for Station WIK374 was granted on March 15, 1994. WTB Ex. 163 p. 1. The license authorizes operation of 84 mobiles on 508.2625 MHz at Sierra Peak. WTB Ex. 163 p. 3-4. Kay's customer records only substantiate a total of 12 mobiles on the frequency as of March 1995 and a total of 12 mobiles on the frequency as of November 1995. WTB Ex. 167 p. 1-2; WTB Ex. 166 p. 1.

75. Kay's license for Station WIK375 was granted on April 5, 1994. WTB Ex. 168 p. 1. The license authorizes operation of 70 mobiles on 508.0625 MHz at Mount Lukens, Hollywood Hills, Oat Mountain, Saddle Peak, and Santa Monica Mountains. WTB Ex. 168 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 19 mobiles on the frequency. WTB Ex. 171 p. 1. Of these, one customer discontinued service before November 1995. Cust. No. 1037, Great American Transportation, discontinued service on April 30, 1994. WTB Ex. 172 p. 1. The customer records only substantiate a total of 13 mobiles on the frequency as of March 1995 and a total of 13 mobiles on the frequency as of November 1995. WTB Ex. 172 p. 1-3; WTB Ex. 171 p. 1.

76. Kay's license for Station WIK377 was granted on April 15, 1993. WTB Ex. 173 p. 1. The license authorizes operation of 73 mobiles on 508.4375 MHz at Mount Lukens and Oat Mountain. WTB Ex. 173 p. 3-4. Kay's customer records indicate a total of 27 mobiles on the frequency as of March 1995 and a total of 19 mobiles on the frequency as of November 1995.

WTB Ex. 177 p. 1-5; WTB Ex. 176 p. 1.

77. Kay has two licenses that authorize operation on 471.7125 MHz at Sierra Peak. Kay's license for Station WIK611 was granted on April 15, 1993. WTB Ex. 178 p. 1. The license authorizes operation of 85 mobiles on 471.7125 MHz at Sierra Peak. WTB Ex. 178 p. 3-4. Kay's license for station WIL733 was granted on April 5, 1994. WTB Ex. 178 p. 5. The license authorizes operation of 90 mobiles on 471.7125 MHz at Sierra Peak and Signal Hill. WTB Ex. 178 p. 7-8. The total number of mobiles authorized on 471.7125 MHz at Sierra Peak is 175. Notwithstanding, Kay's November 1995, business records list a total of 20 mobiles on the frequency. WTB Ex. 181 p. 1. Of these, several customers discontinued service before November 1995. Cust. No. 1213, Metro Mobile Communications, discontinued service on February 15, 1995. WTB Ex. 182 p. 2. Cust. No. 1080, T & J Tow, discontinued service on June 7, 1994. WTB Ex. 182 p. 4. Cust. No. 875, Welch Security, discontinued service on December 31, 1993. WTB Ex. 182 p. 5. The customer records only substantiate a total of 12 mobiles on the frequency as of March 1995 and a total of 12 mobiles on the frequency as of November 1995. WTB Ex. 182 p. 1-5; WTB Ex. 181 p. 1.

78. Kay's license for Station WIK613 was granted on July 27, 1992. WTB Ex. 183 p. 1. The license authorizes operation of 78 mobiles on 472.1875 MHz at Sunset Peak and Sierra Peak. WTB Ex. 183 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 30 mobiles on the frequency. WTB Ex. 184 p. 1. Kay's customer records substantiate a total of 80 mobiles on the frequency as of March 1995 and a total of 30 mobiles on the frequency as of November 1995. WTB Ex. 185 p.1-8, WTB Ex.184 p. 1.

79. Kay's license for Station WIK660 was granted on April 7, 1993. WTB Ex. 186 p. 1. The license authorizes operation of 90 mobiles on 471.7625 MHz at Oat Mountain and Rasnow Peak. WTB Ex. 186 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 46 mobiles on the frequency. WTB Ex. 187 p. 1. Of these, two customers discontinued service before November 1995. WTB Ex. 188. Cust. No. 936, Carlos Rodriguez Courier, discontinued service on October 19, 1993. WTB Ex. 188 p. 1. Cust. No. 1128, Panorama Towing , discontinued service on September 30, 1994. WTB Ex. 188 p. 2. Kay's customer records substantiate operation of 40 mobiles on this call sign as of March 1995, and 40 mobiles as of November 1995. WTB Ex. Nos. 187, 188.

80. Kay's license for Station WIK726 was granted on September 15, 1993. WTB Ex. 192 p. 1. The license authorizes operation of 57 mobiles on 471.1625 MHz at Sierra Peak. WTB Ex. 192 p. 3-4. Kay's customer records substantiate only a total of 45 mobiles on the frequency as of March and November 1995. WTB Ex. 196 p. 1; WTB Ex. 195 p. 1.

81. Kay's license for Station WIK896 was granted on June 11, 1991. WTB Ex. 200 p. 1. The license authorizes operation of 79 mobiles on 471.1875 MHz at Sierra Peak and Sunset Peak. WTB Ex. 200 p. 3-4. Kay's customer records only substantiate a total of 3 mobiles on the frequency as of March and November 1995. WTB Ex. 202 p. 1; WTB Ex. 201 p. 1.

82. Kay has two licenses for 472.2875 MHz at Sierra Peak. Kay's license for Station WIK983 was granted on January 28, 1993. WTB Ex. 203 p. 1. The license authorizes operation of 83 mobiles on 472.2875 MHz at Sierra Peak. WTB Ex. 203 p. 3-4. Kay's license for Station WIL469 was granted on December 9, 1992. WTB Ex. 203 p. 5. The license authorizes another

83 mobiles on 472.2875 MHz at Sierra Peak. WTB Ex. 203 p. 7-8. The total mobiles authorized on 472.2875 MHz at Sierra Peak is 166. Kay's November 1995, business records list a total of 8 mobiles on the frequency. WTB Ex. 206 p. 1. Of these, Cust. No. 1026, T.C. Cleveland Enterprises, discontinued service on March 31, 1994. WTB Ex. 207 p. 2. Kay's customer records only substantiate a total of 6 mobiles on the frequency as of March 1995 and a total of 4 mobiles on the frequency as of November 1995. WTB Ex. 207 p. 1-2; WTB Ex. 206 p. 1.

83. Kay's license for Station WIL260 was granted on June 1, 1993. WTB Ex. 208 p. 1. The license authorizes operation of 90 mobiles on 471.9125 MHz at Sierra Peak. WTB Ex. 208 p. 3-4. Kay's customer records only substantiate a total of 51 mobiles on the frequency as of March and November 1995. WTB Ex. 212 p. 1-2; WTB Ex. 211 p. 1-2.

84. Kay's license for Station WIL432 was granted on January 13, 1994. WTB Ex. 213 p. 1. The license authorizes operation of 11 mobiles on 507.8625 MHz at Mount Lukens, Sierra Peak, and Oat Mountain. WTB Ex. 213 p. 3-4. Kay's customer records only substantiate a total of 6 mobiles on the frequency as of March and November 1995. WTB Ex. 217 p. 1; WTB Ex. 216 p. 1.

85. Kay's license for Station WIL436 was granted on October 26, 1992. WTB Ex. 218 p. 1. The license authorizes operation of 28 mobiles on 472.3375 MHz at Sierra Peak. WTB Ex. 218 p. 3-4. Kay's customer records only substantiate a total of 7 mobiles on the frequency as of March 1995 and a total of zero mobiles on the frequency as of November 1995. WTB Ex. 222 p. 1; WTB Ex. 221 p. 1.

86. Kay's license for Station WIL458 was granted on November 24, 1992. WTB Ex. 223

p. 1. The license authorizes operation of 180 mobiles on 471.3875 MHz at Sierra Peak. WTB Ex. 223 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 18 mobiles on the frequency. WTB Ex. 226 p. 1. Of these, Cust. No. 752, Cravens Construction, discontinued service on September 30, 1994. WTB Ex. 227 p. 1. Kay's customer records only substantiate a total of 16 mobiles on the frequency as of March 1995 and a total of 16 mobiles on the frequency as of November 1995. WTB Ex. 227 p. 2-4 ; WTB Ex. 226 p. 1.

87. Kay's license for Station WIL462 was granted on December 8, 1992. WTB Ex. 228 p. 1. The license authorizes operation of 90 mobiles on 507.7500 MHz at Mount Lukens. WTB Ex. 228 p. 4-5. Notwithstanding, Kay's November 1995, business records list a total of 16 mobiles on the frequency. WTB Ex. 231 p. 1-2. Of these, no customer records were provided, as of March 1995, for Baker's Lock & Key's 6 mobiles. WTB Exs. 232 p. 1-2, 347. Kay's customer records only substantiate a total of 10 mobiles on the frequency as of March 1995. WTB Ex. 232 p. 1-2.

88. Kay's license for Station WIL522 was granted on June 21, 1993. WTB Ex. 233 p. 1. The license authorizes operation of 180 mobiles on 508.2125 MHz at Mount Lukens, Sunset Peak, Signal Hill, Oat Mountain, Sierra Peak and Hollywood Hills. WTB Ex. 233 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 78 mobiles on the frequency. WTB Ex. 236 p. 1-4. Of these, several customers discontinued service before November 1995. Cust. No. 563, Kendall Sign Co., Inc., discontinued service on September 30, 1993. WTB Ex. 237 p. 3. Cust. No. 681, Nolte & Associates, discontinued service on July 31, 1994. WTB Ex. 237 p. 6. Cust. No. 931, WHI Repair Services, discontinued service on

September 30, 1993. WTB Ex. 237 p. 8. Kay's customer records only substantiate a total of 50 mobiles on the frequency as of March 1995 and a total of 50 mobiles on the frequency as of November 1995. WTB Ex. 237 p. 1-8; WTB Ex. 236 p. 1-4.

89. Kay's license for Station WNMT755 was granted on May 11, 1993. WTB Ex. 238 p. 1. The license authorizes operation of 72 mobiles on 852.4625 MHz at Santiago Peak and Mount Lukens. WTB Ex. 238 p. 3-4. Kay's customer records only substantiate a total of 48 mobiles on the frequency as of March 1995 and a total of 48 mobiles on the frequency as of November 1995. WTB Ex. 240 p. 1-5; WTB Ex. 239 p. 1.

90. Kay's license for Station WNQK532 was granted on October 2, 1989. WTB Ex. 241 p. 1. The license authorizes operation of 75 mobiles on 461.9000 MHz at Oat Mountain and Mount Lukens. WTB Ex. 241 p. 3-4. Kay's customer records only substantiate a total of 10 mobiles on the frequency as of March 1995 and a total of 10 mobiles on the frequency as of November 1995. WTB Ex. 242 p. 1; WTB Ex. 243 p. 1-2.

91. Kay's license for Station WNXC713 was granted on August 21, 1991. WTB Ex. 244 p. 1. The license authorizes operation of 90 mobiles on 463.6000 MHz at Oat Mountain and Mount Lukens. WTB Ex. 244 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 50 mobiles on the frequency. WTB Ex. 245 p. 1-2. Of these, no customer's records were provided, as of March 1995, for Waste Management's 2 mobiles. WTB Exs. 246 p. 1-11, 347. Kay's customer records only substantiate a total of 46 mobiles on the frequency as of March 1995 and a total of 48 mobiles on the frequency as of November 1995. WTB Ex. 246 p. 1-11; WTB Ex. 245 p. 1-2.

92. Kay's license for Station WNXW549 was granted on May 11, 1993. WTB Ex. 247 p.

1. The license authorizes operation of 72 mobiles on 851.2875 MHz at Mount Lukens and Santiago Peak. WTB Ex. 247 p. 3-4. Kay's November 1995, business records list a total of 30 mobiles on the frequency. WTB Ex. 248 p. 1. Of these, Cust. No. 786, Excalibur Taxi Service, Inc., discontinued service on June 30, 1994. WTB Ex. 249 p. 5. Kay's customer records only substantiate a total of 71 mobiles on the frequency as of March 1995 and a total of 16 mobiles on the frequency as of November 1995. WTB Ex. 249 p. 1-15; WTB Ex. 248 p. 1.

93. Kay's license for Station WNYR747 was granted on May 11, 1993. WTB Ex. 250 p.

1. The license authorizes operation of 72 mobiles on 852.6875 MHz at Mount Lukens and Santiago Peak. WTB Ex. 250 p. 3-4. Kay's customer records only substantiate a total of 52 mobiles on the frequency as of March 1995 and a total of 48 mobiles on the frequency as of November 1995. WTB Ex. 252 p. 1-7; WTB Ex. 251 p. 1.

94. Kay's license for Station WNZL447 was granted on May 21, 1992. WTB Ex. 253 p.

1. The license authorizes operation of 100 mobiles on 464.2000 MHz at Mount Lukens and Oat Mountain. WTB Ex. 253 p. 3-4. Kay's November 1995, business records list a total of 39 mobiles on the frequency. WTB Ex. 254 p. 1. Of these, no customer records were provided, as of March 1995, for Ron's Hauling & Clean Up's 1 mobile, WTB Ex. 347, and one customer discontinued service before November 1995. WTB Ex. 255 p. 1-4. Cust. No. 256, All Auto Parts Inc., discontinued service on June 30, 1994. WTB Ex. 255 p. 1. Kay's customer records only substantiate a total of 33 mobiles on the frequency as of March 1995 and 34 mobiles as of November. WTB Exs. 255, p. 1-4, 254, p. 1.

95. Kay's license for Station WPAP683 was granted on April 20, 1993. WTB Ex. 256, p. 1. The license authorizes operation of 72 mobiles on 806.000 MHz at Mount Lukens, Santiago Peak and Snow Peak. WTB Ex. 256 p. 3-4. Kay's November, 1995, business records list a total of 32 mobiles on the frequency. WTB Ex. 257 p. 1-2. Of these, Cust. No. 974, Guthrie Electronic Services, discontinued service on May 15, 1994. WTB Ex. 258 p. 4. Kay's customer records only substantiate a total of 26 mobiles on the frequency as of March 1995 and a total of 30 mobiles on the frequency as of November 1995. WTB Ex. 258 p. 1-5; WTB Ex. 257 p. 1-2.

96. Kay's license for Station WPBX246 was granted on March 25, 1993. WTB Ex. 264 p. 1. The license authorizes operation of 100 mobiles on 463.7500 MHz at Mount Lukens, Oat Mountain and Loop Canyon. WTB Ex. 264 p. 3-4. Kay's customer records only substantiate a total of 16 mobiles on the frequency as of March and November 1995. WTB Ex. 266 p. 1-3; WTB Ex. 265 p. 1.

97. Kay's license for Station WPBX247 was granted on March 25, 1993. WTB Ex. 267 p. 1. The license authorizes operation of 100 mobiles on 464.7500 MHz at Mount Lukens and Oat Mountain. WTB Ex. 267 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 8 mobiles on the frequency. WTB Ex. 268 p. 1. Of these, no customer records were provided, as of March 1995, for White Services' 4 mobiles, WTB Ex. 347, and one customer, Cust. No. 906, Julia Aguirre, discontinued service on March 31, 1994. WTB Ex. 269 p. 1. Kay's customer records, therefore, do not substantiate the use of any mobiles on the frequency as of March 1995 and only 4 mobiles as of November 1995. WTB Exs. 269 p. 1, 268, p. 1.

98. Kay's license for Station WPBZ518 was granted on August 10, 1993. WTB Ex. 270

p. 1. The license authorizes operation of 72 mobiles on 851.0000 MHz at Santiago Peak. WTB Ex. 270 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 31 mobiles on the frequency. WTB Ex. 271 p. 1. Of these, no customer records were provided, as of March 1995, for HI-Way Safety, Inc.'s 5 mobiles, WTB Ex. 347, and one customer, Cust. No. 820, Leo Allen & Jay Allen Inc., discontinued service on September 30, 1994. WTB Ex. 272 p. 3. Kay's customer records only substantiate a total of 22 mobiles on the frequency as of March 1995 and 27 as of November 1995. WTB Ex. 272 p. 1-4, WTB Ex. 271 p. 1.

99. Kay's license for Station WPEE253 was granted on February 14, 1994. WTB Ex. 273 p. 1. The license authorizes operation of 75 mobiles on 463.3750 MHz at Santiago Peak and Mount Lukens. WTB Ex. 273 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 39 mobiles on the frequency. WTB Ex. 276 p. 1-2. Kay's customer records only substantiate a total of 38 mobiles on the frequency as of March 1995. WTB Ex. 277 p. 1-2.

100. Kay's license for Station WQP957 was granted on July 8, 1991. WTB Ex. 278 p. 1. The license authorizes operation of 90 mobiles on 507.4625 MHz at Oat Mountain and Castro Peak. WTB Ex. 278 p. 3-4. Notwithstanding, Kay's November 1995, business records list a total of 21 mobiles on the frequency. WTB Ex. 279 p. 1. Kay's customer records substantiate the use of only 21 mobiles on the frequency as of March 1995. WTB Ex. 280 p. 1-2.

101. The following chart summarizes Kay's loading on the above stations:

Call sign	Grant date	Authorized Mobiles	March, 1995 Mobiles Operating	November, 1995 Mobiles Operating
KJV843	1/6/93	180	56	69
WEC934	10/18/91	71	33	220
WIE974	11/20/91	85	25	28
WIF759	1/2/90	47	2	2
WIH315	11/29/90	90	20	20

WIH339	1/24/94	72	15	15
WIH868	7/31/91	58	26	26
WIH 886	9/29/92	66	16	212
WIH946	2/22/91	66	32	35
WII621	8/21/90	45	17	18
WII787	3/25/93	78	21	24
WII874	3/25/93	60	28	32
WII905	10/18/91	79	30	30
WIJ644	6/1/93	84	19	26
WIJ700	9/1/93	67	48	51
WIJ712	6/25/92	77	38	45
WIJ893	11/7/89	162	83	83
WIK208	1/8/92	90	0	0
WIK216	10/19/93	90	27	4
WIK270	11/20/91	85	0	0
WIK294	11/18/93	69	2	2
WIK303	8/21/91	70	10	10
WIK332	1/24/91	76	14	8
WIK373	7/29/92	120	51	51
WIK374	3/15/94	84	12	12
WIK375	4/5/94	70	13	13
WIK377	4/15/93	73	27	19
WIK611	4/15/93	85	12	12
WIK613	7/27/92	78	80	30
WIK660	4/7/93	90	40	40
WIK726	9/15/93	57	45	45
WIL733 <sup>3</sup>	4/5/94	90	0	0
WIK896	6/11/91	79	3	3
WIK983	1/28/93	83	6	4
WIL260	6/1/93	90	51	51
WIL432	1/13/94	11	6	6
WIL436	10/26/92	28	7	0
WIL458	11/24/92	180	16	16
WIL462	12/8/92	90	10	16
WIL469	12/9/92	83	0	0
WIL522	6/21/93	180	50	50
WNMT755	5/11/93	72	48	48
WNQK532	10/2/89	75	10	10
WNXC713	8/21/91	90	46	48
WNXW549	5/11/93	72	71	16

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<sup>3</sup> See para. 86 re WIK611.

WNYR747	5/11/93	72	52	48
WNZL447	5/21/92	100	33	34
WPAP683	4/20/93	72	26	30
WPBX246	3/25/93	100	16	16
WPBX247	3/25/93	100	0	4
WPBZ518	8/10/93	72	22	27
WPEE253	2/14/94	75	38	39
WQP957	7/8/91	90	21	21
Totals		4428	1374	1669
Shortfall			3054	2759

### 3. Spillman Style Trunked Stations

102. Kay also operated conventional stations in the LTR trunking format using channel logic and monitoring. Tr. 1137-39. Kay's records indicate that the following systems did not have sufficient loading.

103. Kay's license for station WIH872 was granted on August 14, 1992. WTB Ex. 80 p. 1. The license authorizes operation of 180 mobiles on 507.7375 MHz at Lukens, Sunset, Junipero, Castro and Sierra. WTB Ex. 80 p. 3-4. Kay's license for station WIK823 was granted on October 27, 1993. WTB Ex. 80 p. 8. The license authorizes operation of 72 mobiles on 508.3125 MHz at Sierra. WTB Ex. 80 p. 10-11. Kay's license for station WIJ635 was granted on April 19, 1994. WTB Ex. 80 p. 12. The license authorizes operation of 180 mobiles on 508.7625 MHz at Lukens, Sunset, Junipero, Castro and Sierra. WTB Ex. 80 p. 14-15. Kay's license for station WIK261 was granted on March 2, 1994. WTB Ex. 80 p. 18. The license authorizes operation of 180 mobiles on 508.9375 MHz at Lukens, Sunset, Junipero, Castro, and Sierra. WTB Ex. 80 p. 20-21. Kay is operating a Spillman typed LTR trunked system at Sierra. Kay's

November 1995, business records list a total of 112 mobiles on the system. WTB Ex. 81 p. 1-3. The customer records only substantiate a total of 103 mobiles as of March 1995 and a total of 112 mobiles as of November 1995 on the system. WTB Ex. 82 p. 1-11; WTB Ex. 81 p. 1-3.

104. Kay's license for station WIK205 was granted on April 21, 1993. WTB Ex. 130 p. 1. The license authorizes operation of 180 mobiles on 508.5625 MHz at Lukens, Sunset, Junipero, Castro, and Sierra. WTB Ex. 130 p. 2-3. Kay's license for station WIJ754 was granted on April 21, 1993. WTB Ex. 130 p. 6. The license authorizes operation of 180 mobiles on 508.6875 MHz at Lukens, Sunset, Junipero, Castro, and Sierra. WTB Ex. 130 p. 8-9. Kay's license for station WIK878 was granted on April 21, 1993. WTB Ex. 130 p. 12. The license authorizes operation of 180 mobiles on 507.7625 MHz at Lukens, Sunset, Junipero, Castro, and Sierra. WTB Ex. 130 p. 14-15. Kay's license for station WIL729 was granted on March 9, 1994. WTB Ex. 130 p. 18. The license authorizes operation of 180 mobiles on 508.7875 MHz at Lukens, Sunset, Junipero, Castro, and Sierra. WTB Ex. 130 p. 20-21. Kay is operating a Spillman typed LTR trunked system at Lukens. Kay's November 1995, business records list a total of 104 mobiles on the system. WTB Ex. 133 p. 1. Of these, several customers discontinued service before November 1995. Cust. No. 1154, JDS Construction, discontinued service on October 31, 1994. WTB Ex. 134 p. 6. Cust. No. 789, Metro Towing, Inc., discontinued service on March 31, 1994. WTB Ex. 134 p. 8. Cust. No. 192, Rapid & Alert Courier Serv, Inc., discontinued service on June 15, 1994. WTB Ex. 134 p. 10. The customer records only substantiate a total of 75 mobiles on the frequency as of March 1995 and a total of 88 mobiles on the frequency as of November 1995. WTB Ex. 134 p. 1-14; WTB Ex. 133 p. 1.