

While Mr. Sobel did some of the maintenance work on stations licensed to him (as Kay's contractor), Mr. Cordaro did not even know if the stations were constructed. He did not learn that an application had been filed to assign his license until well after the application was filed. Furthermore, if Mr. Cordaro had a *bona fide* interest in operating an SMR station, it would seemingly have been unnecessary for him to ask Kay what licenses he had in his name. Furthermore, the record is devoid of any evidence of payments or reports to Mr. Cordaro that would corroborate his status as a *bona fide* licensee.

264. Accordingly, it must be concluded that with respect to the applications that were filed in Kay's name, Pfeifer, Jensen, Hessman, and Cordaro were simply Kay's surrogates, and that Kay regularly and repeatedly abused the Commission's processes. Kay's abuse was accompanied by several instances in which he either misrepresented facts to the Commission or attempted to conceal the true state of affairs from the Commission. Accordingly, this issue must be resolved adversely to Kay.

F. Effect of Unauthorized Transfer of Control Issue

265. This issue requires the Presiding Judge to:

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.

266. One of the fundamental duties of any Commission licensee is that it not acquire control over any radio license without prior consent of the Commission. That duty is imposed by Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §310(d), which

states:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

267. The Commission explained the fundamental importance of this requirement in *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1396 (1978) (footnotes omitted).

While the statute was discussed in the context of a broadcast station, Section 310(d) applies to all station licenses, and the discussion is equally applicable here:

From the first days of broadcast regulation, licensee control over the operation and management of their broadcast facilities has been central to the proper functioning of the regulatory scheme mandated by Congress and enforced by the Commission. Without licensee supervision of and control over the operation of their stations, the key element of the present system -- accountability to the public and the Commission -- would be lost.

The Congress demonstrated its special concern that ultimate responsibility for a station's operation rests with the party licensed by this Commission by imposing requirements that licensees notify the Commission when a 'transfer of control' over a station was proposed and by further requiring a Commission finding that such a transfer will be in the public interest, convenience, and necessity before it can be consummated.

268. On identical facts in the Sobel license revocation proceeding (WT Docket No. 97-56), Administrative Law Judge John Frysiak concluded that it "is abundantly clear that Kay has the ultimate control of Sobel's Management Agreement stations." *Marc Sobel*, 12 FCC Rcd 22879, 22900 (1997). Mr. Sobel and Kay have filed exceptions to that initial decision. The question to be resolved in this case concerns the effect of that determination upon Kay's

qualifications to be a Commission licensee. The Bureau believes that Kay's repeated and flagrant record of acquiring *de facto* control over stations, together with his misrepresentations and lack of candor concerning his relationship with Marc Sobel (see *infra*), show that he is not qualified to remain a Commission licensee.

269. In evaluating the seriousness of misconduct, the Commission primarily examines three factors: "the willfulness of the misconduct, the frequency of such behavior, and its currency . . ." *Policy Statement Regarding Character Qualifications In Broadcast Licensing*, 102 FCC 2d 1179 (1986) at ¶102. This record shows that Kay has a pattern of controlling stations licensed to others. Kay has held *de facto* control of land mobile stations licensed to Carla Pfeifer, Jerry Gales, and Vincent Cordaro. Indeed, Kay's control of those other stations was even more blatant than his control of Mr. Sobel's stations. While Mr. Sobel had some involvement in maintaining the stations as Kay's contractor, Ms. Pfeifer and Mr. Cordaro had virtually no knowledge and no involvement with respect to the stations licensed in their name.

270. Indeed, in these cases, the evidence of multiple unauthorized transfers of control is so clear that Kay's violations must be considered willful. Kay's involvement in these stations was pervasive. He ran the stations in a manner absolutely indistinguishable from his own. Kay prepared the applications. Kay provided all the equipment. Kay obtained the customers for those stations. Kay paid all the expenses. Kay received all the revenues from the stations. Kay bought and sold these licenses as if they were his own stations. When Mr. Sobel worked on these stations, he did so as a contractor selected and paid by Kay. Under these circumstances, Kay's violations of Section 310(d) of the Act were patent.

271. Furthermore, there was no precedent that allowed Kay to act as he did. In particular, Mr. Sobel has cited, in the Sobel proceeding, *Motorola, Inc.*, File Nos. 507505, *et. al.*, (Chief, Private Radio Bureau, issued July 30, 1985) for the proposition that SMR licensees may hire third-party managers to help run their systems, so long as the licensee has a proprietary interest in the equipment and the licensee exercises the supervision the system requires. The Bureau has never argued, and does not intend to argue, that it is impermissible for an SMR licensee to hire a manager to assist in operating the station. By contrast, however, it *is* impermissible for a "manager" to acquire total control over a station's operation while the nominal licensee's role in the station's affairs is that of a mere contractor selected and paid by the manager. In *Motorola*, the licensee owned the equipment and had an independent financial obligation with a financing company. The agreement also specifically provided that Motorola would have to perform its functions pursuant to the licensee's supervision and instruction. *See Motorola, Inc., supra*, ¶19. Here, there only "title" that Sobel has in the equipment is Kay's permission to use Kay's equipment in connection with these stations. Sobel has no financial obligations with respect to the Management Agreement stations. When Sobel works on the Management Agreement stations, he does so as Kay's contract technician. Moreover, several sections of the Management Agreement give Kay the sole right to negotiate contracts and to manage the stations. Accordingly, nothing in the *Motorola* decision allowed Sobel to cede control over the Management Agreement stations to Kay. In addition, Kay's option to purchase the Management Agreement stations for \$500 each, and Mr. Sobel's inability to sell the stations without Kay's approval, provide further proof that Kay held absolute control over these stations.

Finally, the lopsided terms of the management agreement give Kay control over every aspect of the stations to the exclusion of Mr. Sobel.

272. Furthermore, the record does not show that Kay made a good faith attempt to ascertain whether his conduct complied with Commission Rules. While he had counsel draft a written management agreement, the record shows that he did not approach counsel until he learned that this litigation was imminent. Kay had been managing Mr. Sobel's stations for years before counsel was approached. Moreover, Mr. Sobel admitted that the written agreement did not change his relationship with Kay in any way. Accordingly, Kay did not seek his counsel's advice in order to determine whether his conduct was proper and lawful. Instead, counsel was approached in order to put the best possible face on a course of conduct Kay had already engaged in.

273. Finally, the new management agreement Kay and Mr. Sobel entered into in 1999 does not serve to mitigate their prior violations in any way. This agreement was not entered into until over five years after they learned Kay's relationship with Mr. Sobel was a matter of concern to the Commission, almost two years after Sobel's licenses were designated for hearing in this proceeding, and over a year after Judge Frysiak held that Kay "clearly" controlled Sobel's licenses. Such an action comes far too late to have any meaningful impact on the decision in this case. The FCC has ruled that parties may not wait until after an adverse initial decision, and then try to present evidence that could have been presented earlier.²⁶ In *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941), the D.C. Circuit noted:

²⁶ See e.g., *Evergreen Broadcasting Co.*, 7 FCC Rcd 6601 (1992).

We cannot allow the applicant to sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.

If Kay and Mr. Sobel had truly intended to fix any problems with their prior agreement, they had a more than adequate opportunity to fix those problems prior to the designation order in the Sobel proceeding or Judge Frysiaak's *Initial Decision*.

274. In short, Kay's misconduct was willful, repeated and continuing over a period of years, and without meaningful justification in precedent. Ultimately, however, the question of the effect of the unauthorized transfer of control on Kay's basic qualifications is inexorably intertwined with the question of Kay's candor concerning his relationship with Mr. Sobel. When an unauthorized transfer of control is combined with an intent to either deceive the Commission or abuse the Commission's processes, disqualification of a licensee is generally mandated. *Trinity Broadcasting of Florida, Inc., supra, Black Television Workshop of California*, 8 FCC Rcd 4192, 4200 (1993), *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981). Accordingly, conclusions must be reached under the misrepresentation/lack of candor issue in order to determine the impact upon Kay's basic qualifications to be a Commission licensee.

G. Misrepresentation/Lack of Candor Issue

275. This issue requires the Presiding Judge:

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.

276. A misrepresentation is a false statement of fact made with an intent to deceive the Commission. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Lack of candor is a concealment, evasion, or other failure to be fully informative which is accompanied by an intent to deceive the Commission. *Id.* "Reckless disregard is the equivalent of knowing deception." *Trinity Broadcasting of Florida, Inc., supra.* Intent can be shown in many ways. If a party makes a false statement that a party knows to be false, that is sufficient proof of an intent to deceive. "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co. Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980). It can be inferred when a party has a clear motive to deceive. *See, e.g., RKO General, Inc.*, 4 FCC Rcd 4679, 4684 (Rev. Bd. 1989) ("First, while Gardner argues a lack of deceptive intent on his part, the facts nevertheless establish that he had a clear motive for deception when he submitted a divestiture pledge which he had no intention of fulfilling. Deceptive intent must be inferred from Gardner's deceptive conduct."). Intent can also be found when the surrounding circumstances clearly show the existence of an intent to deceive, even if there is no direct evidence of intent to deceive. *American International Development, Inc.*, 86 FCC 2d 808, 816 n.39 ("The Board is correct that the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.")

277. The Commission must be able to rely upon the completeness and accuracy of information provided to it by its licensees and applicants. The Commission has far too many licensees and applicants to independently investigate each and every filing and claim made by

those parties. If the Commission cannot believe and rely on its licensees' reports, it cannot maintain the integrity of its processes. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (Rev. Bd. 1990). The Commission's demand for absolute candor is itself all but absolute. *Emison de Radio Balmaseda, Inc.*, 7 FCC Rcd 3852, 3858 (Rev. Bd. 1992), *rev. denied* 8 FCC Rcd 4335 (1993). The classic statement of a licensee's duty of absolute candor is contained in the Court of Appeals opinion *RKO General, Inc. v. FCC*, *supra*:

Unlike a private party haled into court, or a corporation such as General Tire facing an investigation by the SEC, RKO had an affirmative obligation to inform the Commission of the facts the FCC needed in order to license broadcasters in the public interest. As a licensing authority, the Commission is not expected to "play procedural games with those who come before it in order to ascertain the truth," FCC Brief at 60, and license applicants may not indulge in common-law pleading strategies of their own devise.

670 F.2d at 229.

278. The trait of truthfulness is one of the two fundamental character requirements of all licensees, and acts of misrepresentation or lack of candor by a licensee are "serious breaches of trust." *Policy Statement Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986). In *Trinity Broadcasting of Florida, Inc*, *supra*, at ¶117, the Commission emphasized its demand for absolute candor when it said, "We expect licensees to represent truthfully to the Commission their intentions and the reasons for their actions." Where the submission of false or inaccurate information results from an intent to deceive, the remedy may be total disqualification, even if the facts are immaterial. *FCC v. WOKO*, 329 U.S. 223, 227 (1946), *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8573-74 (Rev. Bd. 1992).

279. Judge Frysiak had the opportunity to evaluate Mr. Sobel's candor in making

virtually the same statements that are at issue in this proceeding. Mr. Sobel signed an affidavit that Kay submitted with his pleading. Kay attested to the accuracy of the underlying pleading that contained most of the same statements. Furthermore, Kay had the same knowledge as Mr. Sobel concerning their relationship. If anything, Kay had more knowledge concerning the purpose of his filing in this proceeding than did Mr. Sobel. Accordingly, Judge Frysiak's analysis is a useful guide to resolving the issue in this proceeding.

280. Judge Frysiak found that the "intended effect" of Mr. Sobel's affidavit "was to persuade the Commission to understand that Kay and Sobel were separate entities, each operating his separate business and neither having any interest in the other's licenses or radio stations." He then writes, "However the record demonstrates that the Sobel's [sic] averment differed from the actual state of facts." *Initial Decision*, ¶71. After detailing Kay's pervasive involvement in the Management Agreement stations, Judge Frysiak analyzed the statement that Kay had no interest in any of Sobel's stations or licenses:

All of this amounts to a fair amount of interest. Sobel maintains that the word interest used in the context of the affidavit only means having legal title. But this assertion must be rejected as being false. Sobel has admitted that when he read the affidavit [he] wondered about the word 'interest' and met with Kay to discuss the affidavit. Kay recalls that he told Sobel that it was explained to him that the word interest referred to 'ownership . . . as having a direct financial stake in something.' Finding 58. Both Kay and Sobel had strong motive to withhold from the Commission the true nature of their business relationship. Sobel well realized that had he been truthful in his affidavit his requests for finders' preference would have been placed in jeopardy. The wording of the affidavit was calculated to ward off the Commission from being apprised of the true nature of the Kay – Sobel business relationship. Such dissembling may not be countenanced.

Initial Decision, ¶73. In this case, the same conclusions must be reached concerning Kay.

281. Kay's motion contained both a specific misrepresentation to the Commission and a lack of candor in his refusal to provide any meaningful information concerning that relationship. In order to understand Kay's state of mind, it is important to examine the underlying circumstances at the time the pleading was filed. Kay knew from the Commission's inquiry letter that the Commission wanted to know what stations he operated. The hearing designation order explicitly stated that the Commission had sought information concerning stations he was managing. Kay perceived that there was an error in the hearing designation order because some of Mr. Sobel's licenses were included in that order. Under those circumstances, Kay "had an affirmative obligation to inform the Commission of the facts the FCC needed in order to license" him. *RKO General, Inc. v. FCC, supra*, 670 F.2d at 229. Kay had a clear and unambiguous duty to fully inform the Commission of his relationship with Mr. Sobel. Indeed, if he truly believed that his relationship with Mr. Sobel was appropriate and in full compliance with the Commission's Rules, Kay had every incentive to come forward and explain that he managed these stations pursuant to a written management agreement, and to provide a copy of our management agreement."

282. Instead, Kay attempted to mislead Judge Sippel and the Commission concerning his relationship with Mr. Sobel. Nothing in the affidavits provided an accurate or complete picture of the relationship between him and Kay. The following decisional information is omitted in the affidavits: (1) Kay manages Sobel's 800 MHz stations pursuant to a Management Agreement; (2) Kay was responsible for finding the frequencies and preparing the applications for the Management Agreement stations; (3) Kay provided all the money and the equipment

needed to build the Management Agreement stations; (4) when Sobel worked on the stations, he did so as a contractor selected and paid by Kay; (5) Kay made the arrangements to acquire and dispose of these licenses; (6) Kay's employees were involved in virtually every aspect of the stations' daily operations; (7) Kay paid all the expenses of the Management Agreement stations, including Sobel's legal fees; (8) the revenues from the Management Agreement stations were deposited into the same bank account of Kay's as the revenues from the stations licensed to Kay, and Sobel did not receive any of the operating revenues of the stations; (9) or Kay could purchase the Management Agreement stations at any time for \$500 each. This information, without doubt, would have been relevant to both the Presiding Judge and the Commission in ruling on Kay's request to remove those licenses from this hearing. Kay's failure to reveal the true extent of his involvement in the Management Agreement stations smacks of an intent to deceive.

283. Furthermore, there is ample evidence that Kay intentionally withheld the information concerning the relationship between himself and Mr. Sobel, and that the failure to provide that information reflects a lack of candor. Kay saw that there was an error in the hearing designation order. Under those circumstances, Kay had a clear and affirmative duty to provide the correct information and let the Presiding Judge decide what action should be taken based upon that information. Instead, Kay submitted a deliberately misleading pleading which does not begin to describe the full scope of the business relationship between him and Kay. Nobody who read Kay's pleading would have had any idea that Kay managed Sobel's stations or that Sobel worked as Kay's contractor. The context in which Kay's pleading is filed is important. Kay knew that the Commission wanted information on stations that he managed. Kay was attempting

to *remove* the Sobel licenses from this proceeding. If his motion had been successful, the management agreement may never had been discovered.

284. Under those circumstances, Kay had a clear duty to disclose the nature of his relationship with Mr. Sobel. As the Commission clearly stated in *Trinity Broadcasting of Florida, Inc., supra*, at ¶117, "We expect licensees to represent truthfully to the Commission their intentions and the reasons for their actions." Instead, Kay wrote a pleading that left the clear impression that Kay had nothing to do with Sobel's stations. Even if Kay's statements could be considered to be technically true (and they cannot), the pleading is a classic case of lack of candor.

285. Moreover, there are specific statements in the affidavit that constitute misrepresentations or lack of candor. The most glaring misrepresentation is the claim that "Mr. Kay has no interest in any radio station or license of which I am the licensee." Given Kay's ownership interest in the equipment, Kay's direct role in acquiring and disposing of the licenses used in connection with the Management Agreement stations, Kay's receipt of the revenues derived from the operation of these stations, and Kay's right to purchase the Management Agreement stations at any time for \$500 at any time, Sobel's claim that Kay has no interest in the stations or licenses is an outright fabrication. More importantly, the record shows that Kay knew he had an interest in the Management Agreement stations and that he intended to deceive the Commission when he claimed otherwise. The affidavit was unconditional, however. It denied that Kay had any type of interest in any of Sobel's stations or licenses. Second, at the time Mr. Sobel signed his affidavit, Kay told Sobel that a "direct financial stake" in something is an

interest. Mr. Sobel knew that Kay had a direct financial stake in the stations. They therefore both knew that the statement was false, and the element of intent to deceive was present. The statement was therefore a misrepresentation. *Leflore Broadcasting Co. Inc., supra.*

286. Furthermore, Kay's attempt to explain why the affidavit is not a misrepresentation is inconsistent with the plain language of the affidavit. Kay claimed that he just meant that his names were not on the licenses. The affidavit, however, denies that Kay has any interest in Sobel's "radio stations or licenses." While Kay denied having any interest in the licenses (even though he could purchase the licenses at any time for \$500 each), Kay acknowledged at the Sobel hearing that he had an interest in the stations because he owned the equipment and received the operating revenue from the stations. Kay's attempt to equate the word "stations" with "licenses" cannot be credited. The word station is defined in the Commission Rules as referring to transmitter equipment and associated equipment.²⁷ The word station is defined in their own management agreement as referring to the physical facilities, not to the piece of paper authorizing operation of the station. The dictionary defines station as "a complete assemblage of radio equipment for transmitting or receiving," or "the place in which such a station is located." *Meriam Webster's Collegiate Dictionary*, Tenth Edition, p. 1149. The statement that Kay had no interest in any of Sobel's stations or licenses was thus a deliberate misrepresentation.

287. Kay also knew that Mr. Sobel's statement contained other instances of lack of candor. Mr. Sobel claimed that "I am not an employer or employee of Mr. Kay" Again,

²⁷ 47 C.F.R. § 2.1. Rule Section 2.1(a) provides that all definitions contained in rule section 2.1 are the definitive definitions and "shall prevail throughout the Commission's Rules." Rule 2.1(c) defines station as "One or more transmitters or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service."

Kay failed to disclose the pertinent facts -- in this case, that Mr. Sobel performed extensive work for Kay as a contract technician both on stations licensed to Kay and stations licensed in Sobel's own name, and Kay paid him for that work. While the statement may be technically correct if one refers to IRS guidelines for distinguishing between an independent contractor and an employee, in the context of making representations to the Commission upon which the Commission will rely, the claim is utterly disingenuous. The relevant and meaningful information that the FCC was entitled to know was that Sobel devoted considerable time to working for Kay and that when Sobel worked on stations licensed to himself, he did so as a contractor selected and paid by Kay. In the common definition of the word "employ", "to use or engage the services of",²⁸ Kay employed Sobel. As in *RKO General, Inc., supra*, the unqualified statement, albeit technically correct, constituted a lack of candor because it failed to provide material facts concerning the work Sobel did for Kay.

288. Moreover, Kay had previously misrepresented facts in an attempt to conceal his relationship with Mr. Sobel. In response to the 308(b) inquiry, he claimed that he did not operate any stations licensed to himself, Buddy Corp., or Oat Trunking Group, Inc. Given his control over the stations licensed to Sobel, it is disingenuous to say that he did not operate Sobel's stations. Again, by the time Kay filed his January 1995 pleading, Kay specifically knew that the Commission wanted information on stations that he managed. Instead of providing that information, however, he filed a false and highly misleading pleading designed to conceal their true relationship.

²⁸ *Meriam Webster's Collegiate Dictionary, Tenth Edition, 1994, p. 379.*

289. Kay's pleading painted a patently misleading picture of the relationship between himself and Sobel. The affidavit leaves the impression that Sobel and Kay are independent businessmen while omitting the facts the Commission needed to evaluate their relationship. Furthermore, individual statements in the affidavit constitute misrepresentations or lack of candor. The evidence overwhelmingly demonstrates that Kay acted with an intent to deceive the Commission. The misrepresentation and lack of candor issue must be resolved adversely to Kay.

H. Conclusion

290. The ultimate question to be decided in this proceeding is whether Kay is qualified to remain a Commission licensee. The record conclusively shows that Kay is not qualified to remain a Commission licensee. Kay's refusal to comply with the Commission's letter of inquiry threatens the integrity of the Commission's enforcement mechanisms. The Commission made every reasonable attempt to accommodate Kay. Notwithstanding, Kay deliberately and contemptuously refused to provide the information the Act required him to provide. In this age of deregulation, with an ever-increasing number of licensees, the Commission must expect that licensees will comply with directives to provide information the Commission needs to carry out its enforcement duties. If Kay's licenses are not revoked, it will send a signal that licensees who have violated the Commission's Rules can stonewall the Commission and make it impossible for the Commission to determine whether its licensees are complying with its rules.

291. Furthermore, the record shows that Kay has repeatedly been dishonest with the Commission. His currently stated reasons for not complying with the letter of inquiry are not

credible in light of his failure to list those reasons when he responded to the inquiry; nor are they credible, given the Commission's assurances about confidentiality. Kay manufactured an invoice and a payment to convince the Commission that Carla Pfeifer had paid for her equipment when she had done no such thing. He prepared and sent to the Commission applications that represented that Ms. Pfeifer, Kevin Hessman, Roy Jensen, and Vincent Cordaro were running their own businesses requiring radio service when he knew no such businesses existed. He repeatedly submitted applications to the Commission seeking loading when he had no basis for believing that he could justify the loading requested. Furthermore, he deliberately lied and hid facts from the Commission concerning his relationship with Marc Sobel.

292. The twin cornerstones for determining whether a licensee is qualified to remain a Commission licensee are (a) the licensee's willingness and ability to comply with the Commission's Rules, and (b) the licensee's willingness and ability to be truthful with the Commission. *Policy Statement on Character Qualifications in Broadcast Licensing, supra*, 102 FCC 2d at 1210. Kay fails on both counts. At heart, the underlying facts in this case are simple. The Commission investigated Kay in order to determine whether he complied with the Commission's Rules. Kay had a clear and unambiguous duty to provide the information directed by the Commission. He deliberately refused to provide that information, even after the Commission provided every assurance possible concerning confidentiality. The information he was eventually compelled to provide showed that many of his stations were not constructed and that he was warehousing a large number of frequencies in his name and in the names of his employees. The record also shows that Kay has a pattern of not dealing truthfully with the

Commission. Accordingly, he is not qualified to remain a Commission licensee, and his licenses should be revoked. The Bureau also believes that if Kay's licenses are revoked, a forfeiture is unnecessary.

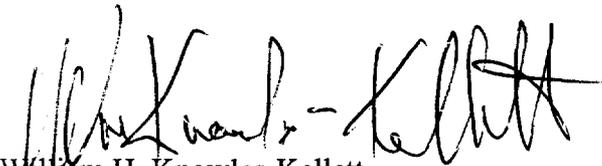
293. Accordingly, the Presiding Judge should issue a decision revoking all of Kay's licenses. If such action is necessary, the Bureau does not believe it is necessary to issue a forfeiture against Kay.

Respectfully submitted,

Thomas Sugrue
Chief, Wireless Telecommunications Bureau



Gary P. Schonman
Chief, Compliance and Litigation Branch
Enforcement and Consumer Information Division



William H. Knowles-Kellett
John J. Schauble
Attorneys, Wireless Telecommunications Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 8308
Washington, D.C. 20554
(202) 418-0569

May 10, 1999

CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 10th day May, 1999, sent by hand delivery (unless otherwise indicated), copies of the foregoing "Wireless Telecommunications Bureau's Proposed Findings of Fact and Conclusions of Law" to:

Aaron Shainis, Esq.
Shainis & Peltzman
1901 L Street, N.W., Suite 290
Washington, DC 20036
(Counsel for James A. Kay, Jr.)

Robert J. Keller, Esq.
Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
Suite 106 - Box 233
Washington, DC 20016-2157
(Counsel for James A. Kay, Jr.)
(Via First Class Mail)

Chief Administrative Law Judge Joseph Chachkin
Federal Communications Commission
445 12th Street, S.W., Room 1-C768
Washington, D.C. 20554



John J. Schauble