

# Shainis & Heltzman, Chartered

Counselors at Law

Suite 290  
1901 I Street, N.W.  
Washington, D.C. 20036

(202) 293-0011  
Fax (202) 293-0810

October 1, 1999

Aaron P. Shainis  
Lee J. Heltzman

Of Counsel  
William H. DuRoss, III  
Ruth S. Baker-Battist  
Robert J. Keller

Magalie R. Salas Esq.  
Secretary  
Federal Communications Commission  
Portals II - 12th Street Lobby  
Filing Couner - TW-A325  
445 12th Street, S.W.  
Washington, D.C. 20554

RECEIVED  
OCT - 1 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: James A. Kay, Jr.  
WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., is an original and fourteen (14) copies of his Opposition to Wireless Telecommunications Bureau's Motion for Extension of Page Limitation.

Should any questions arise concerning this submission, kindly communicate with the undersigned.

Sincerely yours,



Aaron P. Shainis  
Counsel for  
JAMES A. KAY, JR.

Enclosure

No. of Copies rec'd  
List ABCDE

14

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the matter of )  
 )  
**JAMES A. KAY, JR.** ) WT Docket No. 94-147  
 )  
Licensee of One Hundred Fifty Two Part 90 )  
Licenses in the Los Angeles, California Area )

TO: The Commission

**OPPOSITION TO  
WIRELESS TELECOMMUNICATIONS BUREAU'S  
MOTION FOR EXTENSION OF PAGE LIMITATION**

JAMES A. KAY, JR. ("Kay"), by his attorneys, respectfully submits his opposition to the Wireless Telecommunications Bureau's ("Bureau") September 29, 1999 "Motion for Extension of Page Limitation" ("Bureau Motion"). In support, the following is respectfully submitted.

The Bureau requests that the page limitation, as mandated by Section 1.277(c) of the Commission's rules, be extended. Specifically, the Bureau requests that the page limitation be increased to thirty-five (35) pages rather than the twenty-five (25) pages specified by the rule so that the Bureau may "adequately advance its exceptions." See Bureau Motion at ¶ 1. The Bureau argues that an extension of the page limitation is warranted because "this case is a complex and extensive record and involves multiple hearing issues." See Bureau Motion at ¶ 2. The Bureau relies in its Motion on the assertion that the record in the proceeding is "voluminous and complex." The Bureau points out that there are over three hundred (300) exhibits submitted into evidence, two thousand five hundred (2,500) pages of transcripts, and that the Commission's electronic fling [sic] comment system contains a total of five hundred fourteen (514) records in the docketed proceeding. Moreover, the Bureau contends that the I.D. makes extensive reference

reference to material which is not in the record, but rather is in the record of the Mark Sobel proceeding (*i.e.*, Docket No. 97-56). See Bureau Motion at ¶ 3.

Kay opposes the Bureau's Motion. At the outset, the Bureau's Motion is on its face specious. In this regard, the Designation Order in the instant proceeding specified eight issues. In addition, as a result of a Petition to Enlarge Issues filed by the Bureau, two more issues were added. On all the issues the Wireless Bureau had the burden of proceeding with the introduction of evidence and the burden of proof. Pursuant to a Memorandum Opinion and Order in FCC 98M-94, released July 15, 1998, two of the issues were resolved totally in Kay's favor pursuant to a summary decision motion. Moreover, part of another issue was also resolved in Kay's favor. In addition, with respect to the timely construction and/or permanent discontinuance issue, the Bureau presented no evidence that any authorized facilities other than those covered by stipulation were not timely constructed or that operation of such facilities had been permanently discontinued. Moreover, with respect to the malicious interference issue, the Bureau in its findings recommended resolution of the issue in Kay's favor.

From the foregoing, it is clear that the Bureau's assertion of a complex and extensive record involving "multiple hearing issues" is belied by the facts. The facts demonstrate that a number of issues need not and cannot be addressed by the Bureau in its exceptions since they were either resolved by summary decision or the Bureau did not seek adverse resolution of the issues against Kay. Thus, the Bureau's assertion of the "multitude of issues" is lacking in candor.<sup>1</sup>

---

<sup>1</sup> The Bureau's actions are consistent with the misconduct found by the Chief Judge to have been committed by the Bureau (See I.D. at footnote 49).

The Bureau seeks additional pages to take exception to an Initial Decision that is in totality seventy (70) pages. It is disproportionate for the Bureau to require thirty-five (35) pages when the I.D. itself is only seventy (70) pages. Moreover, it is submitted that the instant case is not particularly complex. Rather, its complexity is occasioned by the Bureau's conduct throughout the proceeding. Even in spite of everything that the Bureau has done -- which is delineated in the Initial Decision, this is not a complex case. The Bureau whines because of the number of exhibits and pages of testimony. However, the vast preponderance of the exhibits introduced into the record were proffered by the Bureau. Moreover, the preponderance of the testimony was occasioned by the Bureau. Thus, it is disingenuous for the Bureau to infer that it needs additional pages predicated on these factors.<sup>2</sup> Kay is puzzled with respect to the relevancy of the Commission's "Electronic Fling [sic] Comment System." The Bureau does not explain why this has an impact on its desire for more pages.

With respect to the reference to the material in WT Docket No. 97-56, Bureau counsel in that proceeding are identical to the instant proceeding. The Bureau, lacking in candor, does not point this out.<sup>3</sup> Furthermore, the issue which implicated reference to the Sobel proceeding was requested by the Bureau.

In view of the foregoing, it is urged that the Bureau's Motion be denied.<sup>4</sup>

---

<sup>2</sup> See I.D., footnote 49.

<sup>3</sup> The pattern of prosecutorial abuse found by the Judge continues.

<sup>4</sup> It is submitted that the effect of providing the Bureau additional pages to file its exceptions will only give it ammunition to continue to confuse and obfuscate the record. The Bureau, rather than filing a request to expand the page limitation, should more wisely spend its time writing a brief that is to the point (*i.e.*, concise) and candid.

Respectfully Submitted,

James A. Kay, Jr.

By: Robert J. Keller <sup>APS</sup>  
Robert J. Keller  
Law Offices of Robert J. Keller, P.C.  
4200 Wisconsin Avenue, N.W.  
Suite 106-233  
Washington, DC 20016-2143

Telephone: 301-320-5355  
Facsimile: 301-229-6975

By: Aaron P. Shainis  
Aaron P. Shainis  
Shainis & Peltzman, Chartered  
1901 L Street, N.W.  
Suite 290  
Washington, DC 20036

Telephone: 202-293-0011  
Facsimile: 202-293-0810

CERTIFICATE OF SERVICE

I hereby certify that I, Linda E. Skiles, administrator of the law firm of Shainis & Peltzman, Chartered, this 1<sup>st</sup> day of October, 1999, had a copy of the foregoing pleading sent via first-class U.S. mail, to the following:

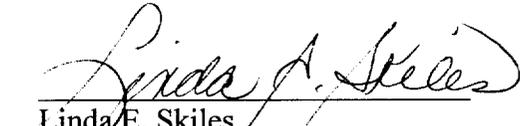
Chief Administrative Law Judge Joseph Chachkin  
Federal Communications Commission  
Room 1-C768  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Gary P. Schonman, Chief  
Compliance & Litigation Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

William H. Knowles-Kellett, Esq.  
John J. Schauble, Esq.  
Wireless Telecommunications Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

John Riffer, Esq.  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

  
Linda E. Skiles