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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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: The Commission

WIRELESS TELECOMMUNICATIONS BUREAU'S OPPOSITION TO MOTION TO STRIKE

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now opposes the "Motion to Strike" filed by James A. Kay, Jr. (Kay) on November 2, 1999.[1]

2. Kay seeks to strike the Bureau's October 12, 1999 exceptions because the Bureau allegedly (a) failed to present questions of law presented, and (b) exceeded the 30 page limitation on exceptions provided for in *Order*, FCC 99I-19 (released October 7, 1999). Kay has failed to show any material defect in the Bureau's exceptions, and he has utterly failed to justify the draconian action of striking the Bureau's exceptions.

3. With respect to the requirement that when filing exceptions a party must state the questions of law presented, the Bureau's exceptions comply with the rule. The Bureau's exceptions set forth the hearing issues in question, and the first paragraph of each section

[1] Kay's motion (as well as his reply brief and request for oral argument) was not properly served as required by Section 1.47 of the Commission's Rules because William Knowles-Kellett, Bureau co-counsel located in Gettysburg, Pennsylvania, was not served with a copy of the filing at his Gettysburg location. The Presiding Judge in this case ruled that Kay was required to serve separate copies of all pleadings on Bureau counsel in Washington and on Mr. Knowles-Kellett in Gettysburg. Tr. 444-445. Kay provides no explanation for his failure to serve Mr. Knowles-Kellett in Gettysburg.

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summarizes the major points as to why the resolution of those issues below were erroneous. That paragraph is followed by the Bureau's argument with respect to each error described. Kay does not allege that he could not determine what issues the Bureau was raising in its exceptions. While the Bureau did not put a separate section in its exceptions called "Questions of Law Presented," its exceptions do state the questions of law raised by the Bureau, followed by argument. Moreover, even if there is some technical defect in the Bureau's exceptions, Kay has offered no justification for striking the Bureau's exceptions.[2]

4. Kay's argument that the Bureau exceeded the 30-page limitation because it filed 29 pages of text and 6 pages of attachments ignores Section 1.48(a) of the Commission's Rules. That rule provides that "materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading." That rule applies to exceptions. *Jack O. Gross t/a Gross Broadcasting Company*, 65 FCC 2d 514 (Rev. Bd. 1977). The attachments to the Bureau's exceptions (a pleading and an order) merely provide factual support for the Bureau's factual assertions concerning matters in WT Docket No. 97-56. Therefore, the attachments do not count towards the Bureau's page limitation, and the Bureau's 29 page pleading complies with the page limitation set by the Office of General Counsel.

[2] If the Commission would like the Bureau to provide a reformatted set of exceptions with a separate section entitled "Questions of Law Presented," the Bureau would gladly do so. As filed, the Bureau's exceptions were 29 pages long, so the Bureau would not be required to make any changes to its exceptions in order to comply with the 30 page limitation.

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 4th day of November, 1999, sent by facsimile (unless otherwise indicated), copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Motion to Strike" to:

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