

MAR - 6 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
MARC SOBEL)
)
Applicant for Certain Part 90)
Authorizations in the Los Angeles)
Area and Requestor of Certain)
Finder's Preferences)
)
MARC SOBEL AND MARC SOBEL)
D/B/A AIR WAVE COMMUNICATIONS)
)
Licensees of Certain Part 90)
Stations in the Los Angeles Area)

WT Docket No. 97-56

To: Honorable John M. Frysiak
Administrative Law Judge

PETITION TO INTERVENE

James A. Kay, Jr. ("Kay"), by his attorneys, and pursuant to Section 1.223(b) of the Commission's Rules, respectfully requests permission to intervene in the above-captioned matter. In support thereof, Kay states as follows:

1. On February 6, 1997, the Commission adopted its Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 97-38 ("HDO").¹

2. According to the HDO, "a substantial and material question arises as to whether Sobel has willfully and/or repeatedly engaged in unauthorized transfers of control of his stations to Kay, in violation of § 310(d) of the Communications Act of 1934, as amended." The alleged transfers of control occurred pursuant to a Radio System Management and Marketing

¹ Neither the HDO nor a summary thereof has been published in the Federal Register. Hence, this Petition is timely filed. Section 1.223(b) of the Commission's Rules.

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Agreement, dated December 30, 1994, between Sobel and Kay ("Agreement"), which covers 15 stations either owned or previously owned by Sobel.

3. The HDO, on its face, acknowledges Kay's interest in these proceedings. The Commission alleges that Kay, by virtue of the Agreement, exercised almost exclusive control over the stations owned by Sobel. Kay's participation in this proceeding will assist the Commission determine whether Sobel violated § 310(d) of the Communications Act of 1934, as amended, since Kay has first-hand knowledge of both his and Sobel's day-to-day operations under the Agreement and control of the affected stations. (See, e.g., West Jersey Broadcasting Co., 48 RR 2d 970, 974 (1980) ("[B]ecause Allen played a central role in the transactions made the subject of the payoff issue, we believe the ALJ should have the benefit of Allen's testimony on the payoff issue."))

4. As a Commission licensee, any determination that Kay improperly assumed control of Sobel's stations, or any testimony taken in connection therewith, could adversely affect Kay in other business or proceedings before the Commission. See, e.g., La Star Cellular Telephone Co., 68 RR 2d 1500 (1991). Kay submits that the only means by which Kay can protect his own business interests and licenses, is to become an active participant in the proceeding. Kay does not desire and should not be required to react to a record developed concerning him or his future ability to earn a livelihood in the broadcast industry

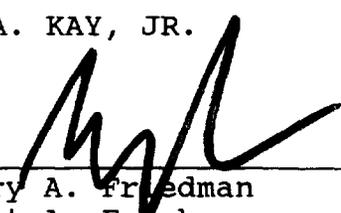
when he was not a participant. By intervening in this matter, Kay can insure, as best as possible, that the record is clear and that the record reflects that he never participated in the violation of any Commission rules relating to Sobel's licenses. Intervention as such a basis is in accord with Commission precedent. Palmetto Communications Co., 69 RR 2d 1316 (Rev. Bd. 1991); West Jersey Broadcasting Co., 48 RR 2d 970, 973 (1980); Quality Broadcasting Corp., 4 RR 2d 865 (1965).

5. In accordance with § 1.223(b) of the Commission's Rules, the Declaration of James A. Kay, Jr. is submitted herewith.

WHEREFORE, pursuant to Section 1.223(b) of the Commission's Rules, Kay respectfully requests permission to intervene in the above-captioned matter.

Respectfully submitted,

JAMES A. KAY, JR.

By: 

Barry A. Friedman
Scott A. Fenske

Thompson Hine & Flory LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

DECLARATION OF JAMES A. KAY, JR.

I, James A. Kay, Jr., declare under penalty of perjury that the following is true and correct:

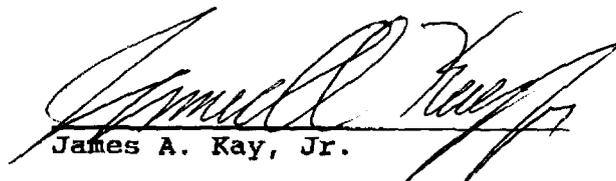
1. I am over 18 years of age, am fully competent to make this Declaration and the facts stated herein are true and correct and within my personal knowledge.

2. I am the person described in the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 97-38 as having a Radio System Management and Marketing Agreement with Mr. Sobel. I am also a Commission licensee. As such, I am competent to testify to the matters stated herein and in the Petition to Intervene filed simultaneously herewith in the above-captioned matter.

3. I make this Declaration in support of the Petition to Intervene filed in the above-captioned matter.

4. I have reviewed the Petition to Intervene and have personal knowledge of the facts contained therein. The factual statements contained therein are true and correct to the best of my knowledge, information and belief.

Executed at Van Nuys, California on the 5th day of March, 1997.


James A. Kay, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was hand-delivered on this 6th day of March, 1997 to the following:

Honorable John M. Frysiak
Administrative Law Judge
Room 223
2000 L Street, N.W.
Washington, D.C. 20554

Gary P. Schonman, Esquire
Federal Communications Commission
Hearing Branch
Mass Media Bureau
Suite 7212
2025 M Street, N.W.
Washington, D.C. 20554

Robert Keller, Esquire
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

and sent via first-class mail, postage prepaid on this 6th day of March, 1997 to:

W. Riley Hollingsworth
Deputy Associate Bureau Chief
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245



Scott A. Fenske