

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
**MARC SOBEL** ) WT DOCKET NO. 97-56  
 )  
 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 )

To: Honorable John M. Frysiak  
Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**REPLY TO OPPOSITION TO BUREAU'S MOTION**  
**TO ENLARGE ISSUES**

1. The Acting Chief, Wireless Telecommunications Bureau (Bureau), by his attorneys and pursuant to Section 1.294(c)(1) of the Commission's Rules, now replies to the "Opposition to the Bureau's Motion to Enlarge Issues" filed by Marc Sobel (Sobel) on April 21, 1997, as corrected by an erratum filed April 23, 1997.

2. In its April 3, 1997 "Motion to Enlarge Issues," the Bureau demonstrated that serious questions existed about Sobel's candor with the Commission. Specifically, the Bureau showed that on December 30, 1994, Sobel signed a Management Agreement with James A. Kay, Jr. (Kay) under which Sobel granted Kay the following interests in fifteen radio facilities

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licensed to Sobel: the right to be the sole marketing and management agent for the stations; the right to receive the first \$600 in monthly revenue derived from the stations and fifty percent of the remaining revenues; and an option to purchase the stations for \$500 a station. Notwithstanding that agreement, Sobel made the following representations to the FCC on January 11 and 24, 1995:<sup>1</sup>

I, Marc Sobel, am an individual, entirely separate and apart in existence and identity from James A. Kay, Jr. Mr. Kay does not do business in my name and I do not do business in his name. Mr. Kay has no interest in any radio station or license of which I am the licensee. I am not an employer or employee of Mr. Kay, am not a partner with Mr. Kay in any enterprise, and am not a shareholder in any corporation in which Mr. Kay holds an interest...

In his opposition, Sobel raises a series of procedural objections to the Bureau's petition, and also argues that there was no misrepresentation or lack of candor in the declaration. In fact, the opposition raises further questions about Sobel's candor, and the requested issue must be added.

3. Sobel first argues that the Bureau's motion is procedurally improper because the Bureau has had his declaration before it since January 1995, but "the Commission nevertheless did not see fit to designate an issue whether, by the *Affidavit* or otherwise, Sobel misrepresented facts to or withheld facts from the Commission regarding the agreement." Sobel Opposition, p.

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<sup>1</sup> Sobel filed two declarations that were identical except for the date. The first declaration, dated January 11, 1995, was filed on January 12, 1995 as part of the "Motion to Enlarge, Change or Delete Issues" with the Commission. After the Bureau filed an opposition pointing out that the pleading was incorrectly directed to the Commission, the pleading was refiled with the Commission on January 25, 1995, with Sobel's second declaration dated January 24, 1995.

3 para. 4. In fact, the Bureau's motion was timely and was not barred by the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing and Forfeiture, FCC 97-38 (released February 12, 1997) ("Order to Show Cause"). When a hearing designation order has thoroughly considered a matter, the Administrative Law Judge is bound by the ruling in the designation order. Anax Broadcasting Inc., 87 FCC 2d 483 (1981). When an issue is not considered in a hearing designation order, however, the Administrative Law Judge is free to address the issue, even if the issue could have been addressed in the designation order. Tequesta Television, Inc., 2 FCC Rcd 41, 42 (1987). Here, the Order to Show Cause did not consider whether a misrepresentation or lack of candor issue must be specified against Sobel. Moreover, the motion is timely under Section 1.229(a) of the Commission's rules because it was filed before a summary of the Order to Show Cause was published in the Federal Register. The motion therefore fully complies with the Commission's procedural requirements. Sobel's claim that "it is inconceivable that [the Commission] would not have designated a candor or misrepresentation issue if it had considered one appropriate on the basis of the information before it" (Sobel Opposition, p. 3 n.5) is rank speculation.

4. The Bureau need not definitively prove now that Sobel misrepresented facts or lacked candor. An issue is appropriate if the Bureau has made a prima facie case of misrepresentation in its initial motion, and substantial and material questions of fact remain after consideration of Sobel's opposition and this reply. Astroline Communications Co. v. FCC, 857 F.2d 1556, 1561-1562 (D.C. Cir. 1988). The Bureau made its prima facie case in the motion by showing the facial inconsistency between Sobel's affidavit and the management agreement. After Sobel's

opposition, many substantial and material questions of fact remain concerning his candor with the Commission.<sup>2</sup> A hearing is needed to resolve these questions.

5. In arguing that the requested misrepresentation/lack of candor issue is not justified, Sobel incorrectly claims that the Bureau's allegations are limited to this one sentence: "Mr. Kay has no interest in any radio station or license of which [Mr. Sobel is] the licensee." Sobel Opposition, p. 4 para. 6. While the Bureau believes that statement raises very serious questions about Sobel's candor, the requested issue seeks to determine whether the affidavit as a whole contained misrepresentations or lacked candor. Indeed, since lack of candor is concealment, evasion, or other failure to be fully informative accompanied by an intent to deceive the Commission (Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983)), the document as a whole must be considered in finding lack of candor. For example, Sobel's statement that "Mr. Kay does not do business in my name and I do not do business in his name" is highly questionable in light of Paragraph XVII of the agreement, which gives Kay the sole right to market services relating to Sobel's stations in Kay's name.<sup>3</sup> If Kay does market services relating to Sobel's stations in his own name, Sobel's claim may have constituted a misrepresentation. Even if Kay has not exercised that right, the failure to disclose Kay's right was misleading. Another statement that must be tested in hearing is Sobel's assertion that he is "not a partner with Mr. Kay in any enterprise." The agreement between Kay and Sobel has many of the indicia of

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<sup>2</sup> A substantial question is one that is fairly debatable or one that could very well be decided in favor of the petitioner. Frank Digesu, 7 FCC Rcd 5459, 5461 n.5 (1992). A material question is one that has legal significance or that affects the outcome of the litigation. Id. at n.6.

<sup>3</sup> A copy of the agreement is submitted as Attachment 1 to this reply.

a partnership agreement: it sets the rights and responsibilities of Kay and Sobel in a common endeavor and it establishes the financial interests of Kay and Sobel in the stations. Further, discovery in the Kay case indicates that Sobel acts as a technician for Kay, notwithstanding Sobel's assertion that Sobel is not an employee of Kay. See Kay's "Responses to Wireless Telecommunications Bureau's First Set of Interrogatories," WT Docket No. 94-147, filed March 10, 1995, Answer 14(s) (submitted as Attachment 2 to this reply).

6. With respect to the one sentence that Sobel does discuss, he offers several defenses of the statement that Kay had no interest in any of Sobel's licenses. First, he argues that "the Bureau has presented absolutely no evidence that Mr. Sobel's statement is inaccurate or false." Sobel Opposition, p. 4 para. 6. More specifically, Sobel claims in a declaration that:

In using the words "Mr. Kay has no interest," I intended to, and did, make the truthful statement that Mr. Kay did not have any *ownership* interest in or *control* of any of my stations. I did not intend to imply that there was *no* relationship or involvement whatsoever between me and Mr. Kay regarding my stations, and I had no intention of concealing such relationship.

Declaration of Marc D. Sobel (Sobel 1997 Declaration), p. 2 para. 10. Sobel's explanation is a post hoc rationalization that raises further questions concerning his candor before the Commission. The dictionary defines interest as meaning a "right, title, or legal share in something..." Meriam Webster's Collegiate Dictionary, Tenth Edition (1994), p. 610. Sobel now explains that when he said "interest," he actually meant a specific type of interest - an "ownership interest" (or control). The plain language of the affidavit, however, denies that Kay has any type of interest in the stations - ownership, financial, management, or other type of interest. Under any conceivable interpretation, Kay's receipt of the right to the first six hundred dollars each

month's gross revenues, plus fifty percent of the remaining gross revenues for up to fifty years, gave Kay a major financial interest in Sobel's stations. Moreover, the option to purchase each of the stations for five hundred dollars each clearly constituted a future interest in the stations. Sobel's claim that he "did not intend to imply that there was *no* relationship or involvement between me and Mr. Kay regarding my stations" is totally contradicted by the plain language of the declaration. Sobel claims that he is "entirely separate and apart in existence and identity from James A. Kay, Jr." There is no qualification or other indication that Kay has anything to do with Sobel's stations in any capacity. A person who reads that affidavit is led to conclude that Kay has nothing whatsoever to do with his stations. There is no indication that Kay manages fifteen (out of twenty-eight) stations, receives a majority of these station's gross revenues, and has an option to purchase the fifteen stations for a nominal sum.

7. A third major problem with Sobel's showing is that he wholly fails to acknowledge his affirmative duty to provide accurate and complete information to the Commission. As the Court of Appeals stated in RKO General, Inc., 670 F.2d 215, 229 (D.C. Cir. 1981):

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"

Even if one assumes that there were no affirmative misrepresentations in the affidavit, Sobel clearly failed to disclose significant facts in the affidavit: i.e., the existence of the management agreement.

8. Sobel also argues that no intent to deceive the Commission can be found because:

At the time I executed the *Affidavit*, it was my understanding and belief that a copy of the written agreement between me and Mr. Kay had been or would shortly be provided to the Commission as part of discovery in connection with Mr. Kay's hearing proceeding.

Sobel 1997 Declaration, p. 2 para. 11.<sup>4</sup> This explanation is contrary to the facts. The first pleading to which Sobel's affidavit was attached requested that "the Commission... either change the OSC [in the Kay proceeding] to delete the reference to the stations identified as stations 154 through 164 in Appendix A, or should dismiss the OSC with respect to those [Sobel] stations." Motion to Enlarge, Change, or Delete Issues, WT Docket No. 94-147, filed January 12, 1995, p. 5.<sup>5</sup> If Kay's motion had been granted, Sobel's stations would have been removed from the hearing, and discovery concerning those stations would have been eliminated. Sobel cannot claim to have understood that the agreement would soon be produced in discovery because his affidavit was designed to prevent discovery with respect to the stations licensed to him. Moreover, Sobel does not explain how possible future disclosure to the Bureau could excuse false statements and lack of disclosure to the Commission or to the Presiding Judge in the Kay proceeding.

9. Sobel also claims that his supposed desire to cooperate and to communicate with the Commission is showed by certain events that took place after the agreement was signed and his

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<sup>4</sup> Sobel's opposition is internally inconsistent. In the body of the pleading, Sobel claims that he "believed, at the time he executed the *Affidavit*, that a copy of his written agreement with Kay had already been provided to the Bureau in discovery." Sobel Opposition, p. 5 para. 7. That statement is inconsistent with the Sobel declaration, which stated the possibility that the agreement "would shortly be provided to the Commission."

<sup>5</sup> A copy of the pertinent portion of the motion is submitted as Attachment 3 to this reply. The January 25 pleading addressed to the Presiding Judge was identical except the reference to the Commission was replaced with a reference to the Presiding Judge, and references to the Order to Show Cause were replaced with references to the Hearing Designation Order.

affidavit was submitted. Sobel 1997 Declaration, pp. 3-4 paras. 15-18. As the Presiding Judge has already ruled, however, the contacts Sobel purports to describe, which took place more than a year after the agreement with Kay was signed, "have no bearing on Sobel's mental disposition at the time the [management] agreement was executed." Memorandum Opinion and Order, FCC 97M-57 (released April 17, 1997). Similarly, they have no bearing on his mental state when he signed the affidavit.

Accordingly, the Bureau request that the Presiding Judge grant its "Motion to Enlarge Issues."

Respectfully submitted,  
Daniel Phythyon  
Acting Chief, Wireless Telecommunications Bureau



Gary P. Schonman  
William H. 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 1, 1997

**ATTACHMENT 1**

**RADIO SYSTEM MANAGEMENT AND  
MARKETING AGREEMENT**

**[REDACTED]**

This MANAGEMENT AND MARKETING AGREEMENT ("Agreement") is made this 30<sup>th</sup> day of December, 1994, by and between MARC SOBEL (hereinafter, "Licensee") and JAMES A. KAY, JR. (hereinafter "Agent"). In consideration of the mutual covenants herein contained, the above-named parties (hereinafter "Parties"), agree to the following:

RECITALS

WHEREAS, Licensee holds authority, or possesses such financial interest or control in such authority, granted by the Federal Communications Commission (hereinafter "FCC") to construct and operate 800 MHz band radio facilities in and about the Los Angeles Metropolitan Area, licensed by the FCC under calls signs KNBT299, WNYE761, WNYR424, WPF529, WNXL471, WPAD685, KRU576, WPCN239, WPCN239, WPCZ354, WPCG780, WNWB334, and WNZS492 (hereinafter, "the Stations"), such that Licensee is the exclusive owner of the license for the Stations, free of all liens and encumbrances, possessing clear and marketable title to said license; and

WHEREAS, the parties desire to make such amendments to their former agreement(s) for the management of and marketing of services from the Stations; and

WHEREAS, Licensee desires to employ Agent as its exclusive marketing agent for the sale of services provided by the Stations to the public and/or all persons eligible to receive services from the Stations; and

WHEREAS, Agent is willing to serve as Licensee's exclusive marketing agent for sales of service from the Stations pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, Licensee desires to employ Agent as the exclusive managing agent for the construction, operation and maintenance of the Stations, in accord with the terms and conditions contained herein; and

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*[Handwritten Signature]*  
*[Handwritten Signature]*

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WHEREAS, Agent is willing to serve as Licensee's exclusive managing agent for the construction, operation and maintenance of the Stations, in accord with the terms and conditions set forth in this Agreement;

THEREFORE, the Parties agree to be legally bound to the terms and conditions stated herein, including without limitation all warranties, covenants and promises contained herein.

TERMS AND CONDITIONS

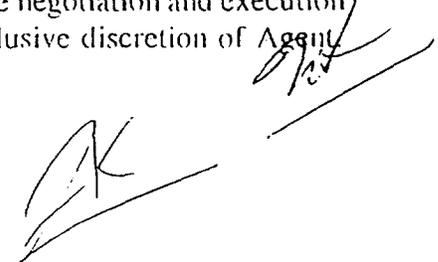
I. Marketing Services To Be Performed. Licensee hereby appoints Agent, and Agent agrees to use its reasonable best efforts to serve as Licensee's sole and exclusive agent for the sale of all services provided by the Stations. Agent may make sales directly or indirectly through arrangements with other persons or firms to perform on behalf of Agent. Agent's duties shall include all administrative and office functions associated with marketing the Stations' services, including but not limited to bookkeeping, billing and collections.

A. All contracts entered into by Agent with third parties for the purpose of Agent's fulfillment of its duties to provide marketing services shall not create any liability in Licensee and performance under such contracts shall be the sole and exclusive responsibility of Agent, except as specifically claimed herein as Licensee's responsibility. Accordingly, the negotiation and execution of any such contracts shall be within the sole and exclusive discretion of Agent. All such contracts which are not set aside by Licensee within ten (10) days of execution, shall be deemed to be ratified by Licensee.

II. Management Services To Be Performed. The Licensee hereby appoints Agent, and Agent agrees to use its reasonable best efforts to serve as the Licensee's sole and exclusive agent for the management of the Stations' transmitting facilities and associated business. Agent may employ such persons as Agent deems necessary to maintain, operate and manage the Stations directly or indirectly through arrangements with other firms on behalf of Agent. Agent's duties shall include all management functions associated with the operation of the Stations, including but not limited to invoicing of users, collection of payments from users, bookkeeping and accounting processes, disbursement of payments to suppliers of goods and services, and control point operation.

A. All contracts entered into by Agent with third parties for the purpose of Agent's fulfillment of its duties to provide management services shall not create any liability in Licensee and performance under such contracts shall be the sole and exclusive responsibility of Agent. Accordingly, the negotiation and execution of any such contracts shall be within the sole and exclusive discretion of Agent.

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III. Maintenance Services To Be Provided. Agent shall be the sole and exclusive supplier of all equipment and labor required to maintain and repair the Stations' facilities, employing Agent's reasonable best efforts. Agent may either supply required equipment and labor directly or may supply required equipment and labor through arrangements with other firms on behalf of Agent.

A. All contracts entered into by Agent with third parties for the purpose of Agent's fulfillment of its duties to provide maintenance services shall not create any liability in Licensee and performance under such contracts shall be the sole and exclusive responsibility of Agent. Accordingly, the negotiation and execution of any such contracts shall be within the sole and exclusive discretion of Agent.

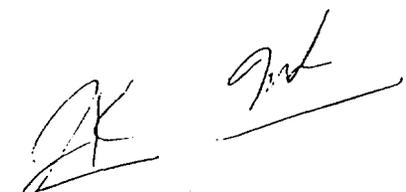
IV. Construction Services To Be Provided. In the event that upon the date of execution of this agreement, the Stations have not been constructed in accord with the rules of the FCC, Agent agrees to construct the Stations in accord with the technical parameters appearing on the license for the Stations, or in accord with any mutual decision of the parties, following the making of all necessary application to the FCC for such modified operation of the Stations. The cost of construction of the Stations shall be borne exclusively by Agent. During the term of this agreement, Agent shall lease to Licensee all equipment necessary to construct and operate the Stations. All rents to be collected by Agent for lease of equipment to Licensee shall be deemed by the Parties to be a portion of Agent's compensation for services described herein.

A. During the term of this agreement all equipment provided by Agent and leased by Licensee shall remain the sole and exclusive property of Agent. Nothing contained herein shall be interpreted to provide to Licensee any title, interest or control over said equipment, except such use of the equipment as is specifically described herein.

B. During the term of this agreement, the Parties shall not cause any lien or encumbrance to be placed on any equipment leased by Agent to Licensee for the construction or operation of the Stations. In the event that a party causes a lien to be placed on said equipment, that party agrees to cause such lien to be removed from said equipment within thirty (30) days notice of the existence of such lien from whatever source and in whatever manner such notice is made.

C. The term of the lease from Agent to Licensee of equipment to construct and operate the Stations shall be coterminous with this agreement.

V. Personnel. All persons, employees, agents, and independent contractors used to cause Agent's performance hereunder shall be compensated by Agent for all purposes. Nothing contained herein shall be deemed to create any liability in Licensee for any claim or cause of action arising out of Agent's employment or use of persons for such purposes. Agent agrees to be solely liable for all such costs, including without limitation, all



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workers compensation, insurance, taxes, and other such costs arising out of the employment of workers for the performance of Agent's duties hereunder. Agent hereby indemnifies Licensee for any and all claims or causes of action arising out of Agent's employment of such persons, including all claims and causes of action arising out of injury to said persons.

VI. Compensation For Services. As compensation for Agent's services described herein, Agent shall be entitled to keep as its sole and exclusive property the first six hundred dollars (\$600) per calendar month of all gross revenues derived by operation of each of the Stations and sales of service to the public or such persons as are eligible to receive service ( i.e. \$600 per Station); and, for each Station, all gross revenues received in excess of six hundred dollars (\$600) in any calendar month shall be divided equally between the parties. Agent shall pay Licensee on the first day of each calendar month during the term of this agreement for Licensee's share of the proceeds from operation of the Station during the preceding month.

A. All revenues produced by operation of the Station may be commingled with Agent's other revenue sources, provided however, that Agent shall keep such books and records sufficient to identify the source and amounts of such revenue.

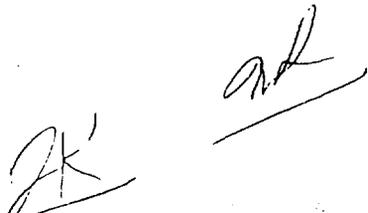
B. Nothing contained herein shall be interpreted to be Agent's guarantee that revenues will be collected from subscribers and Agent shall have no liability for uncollected accounts. Accordingly, any division of revenues between the parties shall be only of monies received by Agent, including the clearance of checks and other negotiable instruments.

VII. Option To Purchase. Licensee hereby grants to Agent or its designee an exclusive, irrevocable option to purchase any Station and any associated license to operate the Station, for an amount equal to five hundred dollars (\$500) per Station. The term of this exclusive option shall be ten (10) years, commencing on the date of the parties' execution of this agreement.

A. As consideration for grant of this exclusive option, Agent shall tender to Licensee within five (5) days of the execution of this agreement by the Parties an amount equal to one hundred dollars (\$100). Agent's failure to tender such amount within thirty (30) days of the execution of this agreement shall cause this option to be void.

B. This exclusive option shall be deemed exercised upon Agent's written request to Licensee to execute an application for assignment of the license for any of the Stations to Agent or its designee, and upon payment of the purchase price, five hundred dollars (\$500) for each Station to be purchased by Agent. Following such notification and request by Agent to Licensee, the Parties shall cooperate fully with each other to cause the assignment of the license for the Station to

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Agent or its designee, including without limitation, the execution of all applications, forms, statements and other documents reasonably demanded by Agent to cause the assignment of the license for the Station from Licensee to Agent or its designee.

C. The Parties recognize that any assignment of the license for any of the Stations shall require approval of the FCC and in the event that such approval cannot be obtained, the Parties agree to continue to be bound by the remainder of the terms and conditions contained herein.

D. Upon the exercise of the exclusive option and upon obtaining FCC consent to the assignment of the license for any of the Stations, such that the FCC's decision regarding such assignment is with finality, the Parties shall deem this agreement null and void for all purposes related to any Station for which the license has been assigned or transferred to Agent from Licensee. The sale of any license to Agent or its designee from Licensee shall be deemed to be the sale to Agent of all of Licensee's interest in any associated Station and any business created by the operation of the Station.

E. During the term of this agreement, Licensee shall maintain exclusive ownership and control of the license for the Stations, free of all liens, encumbrances and security interest such that Licensee shall at all times possess clear and marketable title to said license until and unless said license(s) are assigned to Agent.

VIII. Supervision By Licensee. Licensee shall retain ultimate supervision and control of the operation of the Stations. Licensee shall have unlimited access to all transmitting facilities of the Stations, shall be able to enter the transmitting facilities and discontinue any and all transmissions which are not in compliance with the FCC Rules and shall be able to direct any control point operator employed by Agent to discontinue any and all transmissions which are not in compliance with FCC Rules. All contracts entered into with end users of the Stations' services shall be presented to the Licensee, either by the original proposed contract or by a copy thereof, before such contracts go into effect, and Licensee shall have the right to reject any such contract within five (5) days of presentation, however, such rejection shall be reasonable and based on the mutual interests of the parties. Licensee shall have the right to locate the Stations' transmitting facilities at any place of Licensee's choosing, provided, however, that after the original construction of the transmitting facilities of the Stations is completed and/or following execution of this agreement, Licensee shall give sixty (60) days notice to Agent of any future relocation of any of the Stations. Such relocation shall only occur if it is in the best interests of both Parties.

A. Except as provided specifically herein, nothing contained herein shall provide to Licensee the ability to supervise directly any personnel employed by Agent.

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- IX. Indemnification By Licensee. Licensee hereby agrees to comply with all FCC requirements for the continued licensing of the Stations. Licensee will indemnify Agent for all losses arising out of Licensee's failure to comply with FCC licensing requirements which might cause either a limitation or cessation of the revenue derived or reasonably expected by Agent. Except as provided by Article X herein, in the event that the FCC suspends or revokes Licensee's authority to operate the Stations; or impairs or diminishes the operation of the Stations due to an act of the Licensee or a failure to act by the Licensee, revenues to be derived by Licensee shall be modified proportionately to reflect the consequences of the FCC's actions.
- X. Meeting The Loading Criteria. If the FCC establishes loading criteria for continued operation and authorization of each of the Stations' channels, Agent hereby agrees to use its reasonable efforts in marketing the services provided by the Stations with the objective of assisting Licensee in complying with the FCC rules for reaching and maintaining the loading criteria necessary to prevent the FCC from taking back Licensee's authority to operate on all channels granted to the Licensee by the FCC for operation of the Stations. Both parties are aware of the risk that the FCC may recover channels from the Stations' licenses in the event that end user unit loading requirements are not met. In the event that FCC loading requirements are not met, each party hereby absolves the other of liability for the loss of channels or exclusive operation.
- XI. Service Outages. Agent agrees to use its reasonable best efforts to maintain the Stations to provide continuous service to end users. Licensee hereby agrees to hold harmless Agent for all discontinuation of service caused by mechanical or electrical failure of the Stations and Licensee shall not seek compensation from Agent for any revenues lost due to such failure, except such losses as arise out of Agent's negligence or willful actions.
- XII. Maintenance Of Records. All financial records and contracts associated with the operation of the Stations shall be maintained by Agent in accord with accepted business practices. Licensee shall have the right to inspect all records associated with the operation of the Stations and to make copies of all such records, following which, all original copies of records shall be promptly returned to Agent.
- XIII. Costs Of Operations. Agent shall be responsible for all costs associated with the operation of the Stations, including but not limited to utilities, telephone charges, site rent, provision of radio equipment and legal fees.
- XIV. Term Of Agreement. This Agreement shall become effective upon execution by the parties and shall continue for a period equal to ten (10) years from the date of execution. This Agreement will renew automatically for five (5) consecutive ten (10) year periods unless Agent gives Licensee written notice that it elects not to renew this Agreement, which notice shall be delivered at least ninety (90) days prior to the end of the original term or any renewal term.

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XVI. Breach. The Parties shall be entitled to seek any and all remedies available at law or equity to compel the performance of the other under the terms and conditions contained herein, including without limitation, such injunctive relief as may be deemed required by a party. In the event that a law suit is brought by one party to compel the performance of another or to seek damages for a party's breach of the terms contained herein, the substantially prevailing party in such suit shall be entitled to receive as additional compensation all reasonable attorney's fees and costs arising out of the bringing of such suit or the defense of same. The Parties agree, however, that no such suit shall be brought without providing to the breaching party written notification of any claimed breach and a reasonable time to cure any breach, which shall be at least thirty (30) days from receipt of such written notification.

XVII. Duty To Third Parties. The Parties agree that they shall not bind each other to any contract with third parties which might create liability in the other party for damages arising out of operation of the Stations, including but not limited to, damages caused by harmful radio interference, service outages and discontinuation of services from the Stations. Agent may, in its sole discretion, elect to market the Stations' services to third parties in Agent's name.

A. Nothing contained herein shall be interpreted to create any partnership between the Parties and neither party shall hold itself out to third parties in a manner which might create any impression in third parties that such a partnership exists. Additionally, neither party shall have any fiduciary duty to the other, except as to such matters as are expressed specifically herein.

XVIII. Successors And Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, successors, assigns and any person or entity seeking anything of value arising out of the terms of this agreement or any party's performance hereunder. Licensee may assign its interests, rights, duties and responsibilities, in whole or in part, to third parties, following receipt of Agent's written consent to such assignment.

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- XIX. Notification. For the purpose of written notification to the Parties, the following addresses shall be employed and such addresses may be changed or updated by the Parties upon written notification:

LICENSEE

Marc Sobel  
15705 Superior St  
North Hills Ca 91343

AGENT

James A. Kay, Jr.  
P.O. Box 7890  
Van Nuys, CA 91409  
(818) 899-3506

- XX. Entire Agreement. This agreement is the entire agreement between the Parties with respect to the subject matter hereof, making void all previous negotiations and agreements, and may not be changed except by a written instrument signed by the party against whom enforcement of such change is sought.
- XXI. Counterparts. This Agreement may be executed in counterpart originals, in which case, the effect shall be the same as if both Parties had executed the same document.

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XXII. Choice Of Law. This Agreement shall be interpreted in accordance with and governed by the Laws of the State of California.

INTENDING TO BE BOUND, the Parties have executed this Agreement on the date first written above and by their execution warrant that they possess all necessary authority to bind the person or entity which they claim to represent.

JAMES A. KAY, JR., AGENT

By *James A. Kay, Jr.*

Its *Owner*

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MARC SOBEL, LICENSEE

By *Marc Sobel*

Its *owner*

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**ADDENDUM AND AMENDMENT TO  
RADIO SYSTEM MANAGEMENT AND  
MARKETING AGREEMENT**

By their signatures below, James A. Kay, Jr. and Marc Sobel, hereby create this addendum and amendment to the RADIO SYSTEM MANAGEMENT AND MARKETING AGREEMENT (hereinafter "the Agreement") executed by and between the parties on the 30<sup>th</sup> day of December, 1994, by including and adding within the first paragraph of the Recitals the following calling signs: WPDB603 and WPFH460 and WPCA 891.

Upon execution, this document shall be deemed fully incorporated into the Agreement for all purposes contained therein.

INTENDING TO BE BOUND, the Parties have executed this document on the date first written above and by their execution warrant that they possess all necessary authority to bind the person or entity which they claim to represent.

JAMES A. KAY, JR., AGENT

By *James A. Kay, Jr.*  
Its *Owner*

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MARC SOBEL, LICENSEE

By *Marc Sobel*  
Its *owner*

**ATTACHMENT 2**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
)  
JAMES A. KAY, JR. ) PR DOCKET NO. 94-147  
) WT DOCKET NO. 94-147  
Licensee of one hundred sixty )  
four Part 90 licenses in the )  
Los Angeles, California area )

To: Wireless Telecommunications Bureau

**RESPONSES TO WIRELESS TELECOMMUNICATIONS BUREAU'S  
FIRST SET OF INTERROGATORIES**

*6-2-95 for  
proceed to  
court*

James A. Kay, Jr. (Kay) hereby submits his responses to the Wireless Telecommunications Bureau's First Set of Interrogatories.

1. Identify by call sign and service all licenses issued by the Federal Communications Commission to Kay since January 1, 1991, which are not identified in Appendix A of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 (released December 13, 1994).

ANSWER: Kay holds a license for Business Radio Service station WIK375. Kay holds a license for General Mobile Radio Service station KAE9536. Kay holds a license for Amateur Radio Service station KA6BGS. From January 1, 1991, to the present, Kay has held licenses for stations other than those identified in Appendix A of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 (released December 13, 1994). However, as to stations for which Kay no longer holds a license, he does

See, also, Kay's answer to Interrogatory 14 at Items c), d), e), g), and r).

14. For each business entity identified in paragraph 3 of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 (released December 13, 1994), explain fully the nature and extent of Kay's relationship to the entity.

ANWER: a) Air Wave Communications: The entity is unknown to Kay. (But see Kay's answer to Interrogatory 14 at Item s).)

b) John C. Allen dba Buddy Sales: Kay has no relationship to the entity.

c) Buddy Corp.: Kay is owner of all of the shares of the entity.

d) Buddy Sales: Buddy Corp. did business under the name Buddy Sales during the period 1984 through June 1990. See Kay's answer to Interrogatory 14 at Item c).

e) Buddys Sales: "Buddys Sales" may be a misspelling of Buddy Sales. See Item 14 d), above.

- s) Marc Sobel dba Airwave Communications: Marc Sobel is an independent businessman who does business under the name Airwave Communications. Marc Sobel is an independent contractor to Kay and performs various technical services for Kay. Kay also manages stations which are authorized to Marc Sobel.
- t) Southland Communications: See Item 14 g), above.
- u) Southland Communications, Inc.: The entity is unknown to Kay.
- v) Steve Turelak: "Steve Turelak" may be a misspelled reference to a former employee of Kay. The correct spelling of the name of Kay's former employee is "Steve Terelak".
- w) Triple M Enterprises, Inc.: Kay has no knowledge of the entity.
- x) V&L Enterprises: Kay has no relationship to the entity.

**ATTACHMENT 3**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
JAMES A. KAY, JR.	)	PR DOCKET NO. 94-147
	)	WT DOCKET NO. 94-147
Licensee of one hundred sixty	)	
four Part 90 licenses in the	)	
Los Angeles, California area	)	
To: The Commission		

MOTION TO ENLARGE, CHANGE OR DELETE ISSUES

James A. Kay, Jr. (Kay), by his attorneys, pursuant to Section 1.229 of the Commission's Rules, hereby respectfully requests that the Commission enlarge, change, or delete certain issues designated in the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture (OSC). In support of his position, Kay shows the following.

On January 31, 1994, W. Riley Hollingsworth, Deputy Chief, Private Radio Bureau, Licensing Division (Hollingsworth), sent to Kay a letter pursuant to Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. §308(b). The letter requested that Kay supply certain information. Subsequently, Hollingsworth sent to Kay a series of letters requesting that same information in support of certain then-pending applications for new or modified station licenses.<sup>1</sup> Kay responded to each of Hollingsworth's letters with respect to

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<sup>1</sup> Those applications had been assigned file numbers 415060, 415082, 415236, 415237, 415243, 415255, 415274, 415294, 415303, 415304, 415315, 415316, 415317, 415319, 415321,