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FEDERAL COMMUNICATIONS COMMISSION

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| In the Matter of: |) | Docket No.: WT97-56 |
| MARC SOBEL, APPLICANT |) | |
| FOR CERTAIN PART 90 |) | |
| AUTHORIZATIONS IN THE LOS |) | |
| ANGELES AREA AND REQUESTOR OF |) | |
| CERTAIN FINDERS PREFERENCES |) | |
| MARC SOBEL AND MARC SOBEL |) | |
| D/B/A AIR WAVE COMMUNICATIONS |) | |
| LICENSEE OF CERTAIN PART 90 |) | |
| STATIONS IN THE LOS ANGELES |) | |
| AREA |) | |

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

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| |) | |

Courtroom 2
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
July 30, 1997

The parties met, pursuant to the notice of the
Judge, at 10:00 a.m.

BEFORE: HON. JOHN M. FRYSIAK
Administrative Law Judge

APPEARANCES:

On behalf of Petitioner:

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Washington, D.C. 20554

I N D E X

| <u>WITNESSES:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> |
|-------------------|---------------|--------------|-----------------|----------------|----------------------|
| Marc David Sobel | | 215 | 308 | 314 | |
| James A. Kay, Jr. | 324 | 372 | | | |

Hearing Began: 10:00 a.m. Hearing Ended: 3:02 p.m.
Recess Began: 12:17 p.m. Recess Ended: 1:00 p.m.

P R O C E E D I N G S

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JUDGE FRYSIAK: Good morning all. Please be seated. We are on the record. Any preliminary matters?

MR. FRIEDMAN: Your Honor, just to enter an appearance. Barry Friedman for the Intervenor, James A. Kay, Jr.

JUDGE FRYSIAK: All right.

MR. SCHAUBLE: Your Honor, I have one preliminary matter, more in terms of a question.

JUDGE FRYSIAK: Yes.

MR. SCHAUBLE: As Your Honor knows, there is a pending discovery matter with respect to Mr. Kay and a document that was submitted for which Mr. Kay claimed privileged.

JUDGE FRYSIAK: Yes.

MR. SCHAUBLE: I was wondering if Your Honor has entered into a ruling yet on --

JUDGE FRYSIAK: Well, I have not made an expressed ruling. But I have looked at the documents, and it is my firm belief that they are privileged. The documents that were submitted to me, the attorney-client privilege does extend to it.

MR. SCHAUBLE: Okay.

JUDGE FRYSIAK: All right? If you want it in writing, I can do it.

1 MR. SCHAUBLE: I think just so long as it is clear
2 that you have actually ruled that the documents are covered
3 by that privilege.

4 JUDGE FRYSIAK: I have them right here, as a
5 matter of fact. But they are privileged.

6 MR. SCHAUBLE: Thank you, Your Honor. That was my
7 only preliminary matter.

8 MR. KELLER: The only preliminary matter I have is
9 I wanted to provided a copy for Your Honor. These are the
10 color versions of the black and white pictures that are in
11 some of our exhibits. They are marked either in the front
12 of the large ones or on the back of the photographs.

13 JUDGE FRYSIAK: Okay.

14 MR. KELLER: And I have an extra copy for --

15 MR. FRIEDMAN: You gave me one.

16 MR. KELLER: Did I already give it to you? You
17 better give it to them, and I will get you another one.
18 Other than that, I have nothing else, Your Honor.

19 JUDGE FRYSIAK: All right. If there is nothing
20 further, we will continue with examination of Mr. Sobel.
21 Mr. Sobel, please take the stand.

22 Whereupon,

23 MARC DAVID SOBEL

24 having been previously duly sworn, was recalled as
25 a witness herein and was examined and testified as follows:

1 JUDGE FRYSIAK: I want to remind you that you are
2 still under oath.

3 THE WITNESS: Yes, sir.

4 MR. KELLER: Good morning.

5 THE WITNESS: Good morning.

6 CROSS-EXAMINATION

7 BY MR. KELLER:

8 Q Mr. Sobel, I want to begin this morning by going
9 through, first of all, some of the direct case exhibits of
10 the Bureau. I would like for you to turn to WTB Exhibit 1.

11 These are the series of various application forms
12 submitted on your behalf for 800 megahertz facilities. Is
13 that correct?

14 A Yes.

15 Q I just want to get a sample of these that is not
16 otherwise cut off. Would you turn to Page 4 of 30? It
17 looks like an application form. The first frequency listed
18 on it is 853.1375 megahertz. Do you see that?

19 A Yes.

20 Q Can you tell me what is this form? What form are
21 we looking at?

22 A This is Form 574. It's the old form that the FCC
23 used to use for us to fill out and apply for licenses.

24 Q I just want you to walk through some of these
25 items on the form with me, and explain them to me. I see,

1 obviously, is a list of the frequencies, under Column 1.
2 What are these letters and numbers under Item 2? It says
3 Station Class. Can you explain those?

4 A "FB" stands for Fixed Bay Station. The "2" stands
5 for a Fixed Bay Station that is not shared by others. It's
6 only mine, say. The "C" indicates for interconnect.

7 Q I believe we discussed that a little bit
8 yesterday. Right?

9 A Yes.

10 Q What about FX 1?

11 A FX 1 is a control station. A control station
12 would be like my location, as indicated later in the
13 application. It could be a customer's location or any
14 location other than the repeater itself, where there's a
15 radio actually installed in a fixed location versus hand
16 held.

17 Q So each one of these codes then, reflects a
18 different type of operation on whatever frequency is
19 designated?

20 A Correct.

21 Q What is the MO?

22 A MO as in mobiles.

23 Q So these are the actual users you were talking
24 through the repeater?

25 A Yes.

1 Q All right. I see in the next item, some number of
2 units. That would explain why under the Bay Stations, there
3 is just one unit. Whereas, under Mobiles, I see several?

4 A Correct.

5 Q What is 20 units under something called FX 1T?

6 A It's a common way that most of us license a
7 station to cover our continuing churning of customers. We
8 keep customers for awhile. They change services. They
9 move, et cetera. It allows us to provide a license station
10 for their location at the time, basically, on a temporary
11 basis. The FX 1 -- Again, FX 1 is the control station. The
12 "T" stands for temporary.

13 Q In Column 4, where it says "Admission Designator,"
14 I see a reference that says "See Back." If you would flip
15 over to Page 5, this is one of several similar pages the
16 Bureau asked you about yesterday on direct examination. Do
17 you know why this is upside down?

18 A This is a long form. It's a legal-sized form.
19 It's just the way they did it.

20 Q Okay. Wasn't this the form that was actually
21 printed in reverse, so when you flipped it up you could
22 see --

23 A No. They printed it this way.

24 Q Right. That is my point.

25 A Yeah.

1 Q So it is not that somebody wrote upside down. If
2 this had been an actual copy of a form, the whole page would
3 be upside down?

4 A That's correct.

5 Q At any rate, the Bureau asked you yesterday about
6 this handwriting on the back. And you testified that that
7 handwriting was, to the best of your knowledge, that of
8 James Kay, which says, "All Stations to Use" and then it
9 lists various admission designators.

10 Do you have an understanding or personal
11 knowledge, as to why this information was handwritten on the
12 back of the form?

13 A It doesn't fit on the front of the form. They
14 provide space on the back of the form here to cover anything
15 that doesn't fit on the front.

16 Q Okay. Do you have any understanding or knowledge
17 as to why this was written there by Mr. Kay?

18 A Well, since it didn't fit on the front, and the
19 reason why it didn't fit on the front is because the 20KOF3E
20 and 20KOF2D and the 20KOF1D just can't fit physically in the
21 front. So we just wrote "See Back" and we write it in the
22 back.

23 The designators, in this case, are a little bit
24 more unusual than the average application. The average
25 application can put them on the front. It's just that we

1 wanted to make sure that you could have digital
2 transmissions and other transmissions that aren't normally
3 covered by a single --

4 Q So it leaves in part the provision for digital
5 transmissions to make these designators a little more
6 unusual and lengthy?

7 A Correct.

8 Q Okay. Moving along here, I do not want to belabor
9 this too much. But in the next columns I see reference to
10 "Output Power" and "E.R.P." And there are various different
11 numbers, depending on the class of the stations. Could you
12 just briefly explain what those values mean?

13 A The Output Power is the transmitter wattage of the
14 station. E.R.P. is Effective Radiated Power. That's a
15 factor of the antenna having a -- what we call, a gain to
16 it. If an antenna has gain, then you effectively cover a
17 larger area. You effectively enhance your power level.

18 A.A.T. is Average Above Terrain. And that's
19 referenced to -- say, you had a station on a 7,000 foot
20 mountain, but the city is only 4,000 foot above elevation.
21 Your A.A.T. in that case, would be the 3,000 feet. And
22 there's a complex computer calculation to make that.

23 Q Okay. The geographic coordinates are self-
24 explanatory. How do you go about determining those usually?

25 A Usually, you look it up on a U.S. Government topo

1 map, and calculate out the locations. More often than not,
2 especially for repeater sites, the landlord has done this
3 type of work or surveyor has done that type of work
4 already -- provides it to us to do the licensing.

5 Q Could you flip for a moment to Page 6 of 30 for
6 me? Then, take a look at Items 14 through 17, where they
7 list less technical information about site locations. In
8 other words, not geographic coordinates, but actual names
9 and addresses and cities.

10 Here, we see three locations listed, and I do not
11 know whether this was done at the Commission or when you
12 sent the application in. But I see the first one is
13 designated as primary. And the second two, Mount Lukens and
14 Sunset Peak are designated as secondary. Do you see that?

15 A Yes.

16 Q Can you tell me what are the meaning of primary
17 and secondary in this context?

18 A Yeah. First of all, this is something that in the
19 Commission's process that they marked on the application.
20 But it is understood that the first station listed on an
21 application, Station A, would be a primary station. The
22 primary station is the station that receives the protection
23 of loading and radius of operation.

24 The second stations are listed only from the point
25 of view that if we should install the repeater within that

1 area of operation, that we can do so. It's not a
2 requirement. Secondary stations are not a requirement to
3 fulfill loading capacity or construction requirements.

4 Q Okay. Thank you. Look down at Item 20. I see
5 the designation GX. What does that mean?

6 A GX is the class of the station. GX stands for SMR
7 conventional repeater system.

8 Q What is conventional, as opposed to --

9 A One repeater. One -- A simple operation. One
10 repeater by itself with a group of users, essentially.

11 Q As opposed to what?

12 A Trunks. Trunk stations would be a grouping of
13 repeaters that are interconnected in a special way with some
14 super enhanced capacities. More often than not, I.B. would
15 be for business radio, which is one of the classifications
16 I'm licensed. My UHF stations -- and that would be in the
17 business classification. If you're a police department, you
18 would use P.S. for public service. And there's a whole
19 group of listings.

20 Q It gives the Commission a concept for what kind of
21 station this is, what is being used for.

22 A Right. It also develops your eligibility to have
23 that license and that gives the frequency.

24 Q This is most of the technical information on the
25 form. This knowledge you have of this, is this something

1 that you learned in preparation for this hearing?

2 A No.

3 Q How did you come by this knowledge?

4 A Well, I've been doing this for almost 20 years
5 now, and I applied for my licenses when I started. I
6 tripped over the process many times as most of us do. NABER
7 provides a little how-to book.

8 I spent a long time talking to people, in general,
9 to make sure I fill these out right. And I have, frankly,
10 done them wrong. I get them back from the Commission saying
11 that this is wrong, or NABER will return them and say, this
12 is wrong. Or sometimes the mistakes or errors can be
13 corrected over the phone.

14 Q At the time you began doing the 800 megahertz
15 applications, however, you made an arrangement with Mr. Kay,
16 for a number of reasons that you described yesterday, to
17 take the primary responsibility for preparing these actual
18 forms for your review. But you had this same basic
19 knowledge at the time you were reviewing these forms that he
20 prepared. Correct?

21 A Yeah. I could have done them myself.

22 Q I believe I asked you this yesterday, so I
23 apologize if it is a repeat. But to your knowledge, have
24 you always reviewed and signed all the forms personally,
25 before they go in to the FCC?

1 A Yes.

2 Q We also talked briefly yesterday about Item 37 on
3 the form, which says "Individual completing this application
4 form." And it gives a name and phone number. Going through
5 the various exhibits, we noted that sometimes the name Marc
6 Sobel is listed, and sometimes the name James Kay is listed.
7 What did you interpret this item as requesting?

8 A Generally, they want to know who to talk to if
9 there's a problem with the application. I think that that
10 box is there in existence, because often times they'll get
11 license application from, you know, like Data Products, some
12 giant conglomerate or corporation with an address on it.
13 And if you call the phone number on the bottom of the
14 application, you get the operator. And they don't know who
15 filled this thing out, what department did it, who to call,
16 who to ask for, et cetera. They're responsible, obviously,
17 for finding this all out. But by having the name on 37, it
18 does provide for a individual person to talk to --

19 Q It might almost be as bad as calling the
20 Government sometimes. Right? Sorry, Your Honor. I could
21 not resist that.

22 You said earlier, when you started this morning,
23 you said this is the old form. Is this Form 574 the form
24 you would use today if you were filling out an application
25 of this type?

1 A No.

2 Q This has been replaced?

3 A Yes. They now use Form 600.

4 Q Does the Form 600 call for similar information as
5 to Item 37?

6 A Yes. Although they did make a change, and they
7 actually put the word "contact person" in there, instead of
8 the person preparing the application.

9 Q And you knew at the time that these applications
10 were being prepared, consider either yourself or Mr. Kay as
11 being someone competent to field initial inquiries from the
12 Commission were they to call?

13 A Sure.

14 Q Okay. I want you to look at Items 21 through 25
15 of the form. They call for the name and address of the
16 applicant. Could you read the address listed here?

17 A It's my home address. 15705 Superior Street, my
18 former address, because this is an older application, and I
19 had moved. But this is my business address, too.

20 Q Okay. So, this is the official address of record
21 for this application?

22 A That's correct.

23 Q And if any communications then were mailed by the
24 FCC regarding this application, they would go to --

25 A To me.

1 Q To this address. Item 19 lists something called a
2 "control point." First of all, can you tell me what is a
3 control point?

4 MR. SCHAUBLE: Your Honor, correction for the
5 record. I believe it is Item 18.

6 MR. KELLER: Again, I apologize, Your Honor. My
7 eyes are bad, Your Honor. This is a small copy. It is Item
8 18.

9 THE WITNESS: Item 18 is more than just my mailing
10 address as far as the Commission's concerned. It is the
11 point that they consider. And as I put down here, the
12 controlling point of the station where --

13 MR. KELLER: What do you understand that a control
14 point is?

15 THE WITNESS: It does several things. It's
16 usually where I have radios to actually control and enable
17 or disable the repeaters. It should be the point of making
18 contact with me. I mean, they should be able to find me
19 that way, too, Point where my records are kept and things
20 like that. It's my central control of my repeater system.

21 BY MR. KELLER:

22 Q What is involved in controlled the repeater?

23 A Being able to turn on and off the repeater, by
24 either remote control or having the necessary information at
25 that point to turning on and off the repeater by remote

1 control.

2 Q When you say by remote control, is this done over
3 the phone lines over the air?

4 A Over the radio. I have radios at my control plane
5 -- at my house, to actually accomplish this.

6 Q Can anybody with a radio do this?

7 A Well, they have to have the secret codes and other
8 proprietary information to gain access to the systems.

9 Q In your understanding, are you required to have a
10 licensed control point for your repeaters?

11 A Technically, I believe that I'm required to have a
12 contact point, which kind of is almost the same. But if I
13 list it as a control point, then it actually gives me
14 authorization to operate a radio from that location.

15 Q I understand. The address that is here the same
16 as your home address, 15705 Superior Street?

17 A Correct.

18 Q Is the phone number that is listed there, your
19 phone number at that location?

20 A Yes.

21 MR. SCHAUBLE: Your Honor, just to clarify. At
22 this time, in light of the witness's testimony, that the
23 witness has moved.

24 MR. KELLER: Right.

25 THE WITNESS: Yeah. I'm sorry.

1 MR. KELLER: That is correct.

2 THE WITNESS: Thank you. I moved about a month
3 ago.

4 BY MR. KELLER:

5 Q Is that phone number still active?

6 A The phone number is active, and it does refer to
7 my new address.

8 Q Do you still own this location?

9 A I still own the property. Yes.

10 Q I would like you to refer for a moment, generally,
11 to Exhibits 5 through 18. These are the various copies of
12 your licenses. Let's just take Exhibit 5 as an example.

13 This is an authorization for call sign KRU576. Do
14 you see that?

15 A Yes.

16 Q What is the licensee name and address listed on
17 this authorization?

18 A It's my name, Marc Sobel, d/b/a AirWave
19 Communications. Again, this is my home address or my prior
20 home address.

21 Q In the portion of the application that is like a
22 form or a box, down near the bottom of the box where it
23 says, "Control Points," what is the information listed
24 there?

25 A This is again, my former address. 15705 Superior

1 Street, North Hills.

2 Q And the phone number?

3 A My phone number, 818-894-6950.

4 Q Did I ask you, in preparation for this hearing, to
5 examine all of these exhibits, 5 through 18, to determine
6 their completeness and accuracy?

7 A Yes.

8 Q Do each of these licenses have your address, as
9 both the licensee address and your address and phone number,
10 as the control point?

11 A Yes.

12 Q So if the FCC mails out any inquiries, whether it
13 is about an application or after an application is granted,
14 about the conduct of the licensee or that sort of
15 information, to what address do they mail it?

16 A They mail it to my business address and my home
17 address.

18 Q Who gets that mail?

19 A I do.

20 Q Does Mr. Kay ever get mail at that address for
21 you?

22 A No.

23 Q So, if Mr. Kay is going to become aware of
24 communications from the Commission of that nature, how does
25 he become aware of them?

1 A I make him aware of it.

2 Q All right. If Mr. Kay prepares a response to an
3 FCC inquiry on your behalf, how does that come about?

4 A I ask him to do it.

5 Q So, he never receives communications in the mail
6 directly from the FCC, prepares a response, and then calls
7 you and tells you about it. Right?

8 A Right.

9 Q So, if you get something from the FCC, you make a
10 decision to tell him about it, and ask him to prepare the
11 response?

12 A Yes.

13 Q Then, you review the response before it is
14 submitted?

15 A Yes.

16 JUDGE FRYSIAK: This address on Superior Street.
17 Is that your residence, or was that your residence?

18 THE WITNESS: It was my residence, and I have an
19 office there at my residence.

20 JUDGE FRYSIAK: Is the office part and parcel of
21 your residence, or it a separate entry?

22 THE WITNESS: It has a separate entry. I
23 converted part of a three-car garage into an office.

24 JUDGE FRYSIAK: All right. Does Mr. Kay have
25 availability and access to your office?

1 THE WITNESS: No.

2 BY MR. KELLER:

3 Q You have since relocated. Do you have a similar
4 set-up at your new residence?

5 A Yes. I made a pretty big point when we moved that
6 we -- that I have an office. So, we bought a house with a
7 three car garage again. And basically, I did the same
8 thing, converted one car space into an office.

9 Q Okay. Are you familiar with something called
10 Application Preparation Services?

11 A Yes.

12 Q What are they?

13 A Well, not everybody knows all this technical
14 jargon to apply for licenses. And sometimes even myself,
15 radio dealers, don't have the time. It takes a couple hours
16 to sit down and accumulate the information. Well, you have
17 to do that anyway for the service, but it takes some time to
18 prepare all this stuff. And it also takes some effort, if
19 you wish, to follow it in the system. So, what we do is
20 we -- There are a couple people here in the Gettysburg and
21 D.C. area, who professionally prepare applications.

22 Q Have you ever used such services, either for
23 yourself or for clients who you were consulting for?

24 A Yes.

25 Q Are you also aware, that in addition to these

1 specific types of firms, some mobile licensees and
2 applicants have their forms prepared by either consultants
3 or attorneys?

4 A Yes.

5 MR. SCHAUBLE: Objection, relevance, Your Honor.
6 We are not talking about Mr. Sobel's stations here. I do
7 not see where this goes to the designated issues.

8 MR. KELLER: Well, Your Honor, if you wish a
9 proffer where it is going is, I am wishing to show that
10 there is a certain industry custom and practice, and that
11 Mr. Sobel's conduct has not been beyond the scope of that.

12 JUDGE FRYSIAK: Objection is overruled.

13 MR. KELLER: Thank you.

14 BY MR. KELLER:

15 Q So based on your knowledge, you said --

16 A The answer's yes.

17 Q Based on your knowledge, is it a common practice
18 that the names, addresses and phone numbers of such
19 application preparers, might appear at various times on
20 various places, of either the FCC application forms or the
21 frequency coordination forms?

22 A Generally speaking, the NABER coordination form.
23 They could put their name down as a contact person. The old
24 form -- They would put just their name and phone number down
25 as the preparer. On the new form, they'd actually put their

1 name, phone number and address down as the contact person.

2 So, it's common.

3 Q Would you find it surprising to occasionally find
4 the handwriting of an application preparation person at some
5 point on the form?

6 A Oh, sure. It saves mailing applications and forms
7 back and forth. So, if the licensee understands it's
8 written down, then I don't think there's any harm in it.

9 Q I would like you to refer to Wireless Bureau
10 Exhibit 2. And again, I am not going to ask the same series
11 of questions about every single item here. These are a
12 series of forms that are all similar. I am going to ask you
13 some questions about the first one, but my questions are
14 intended to apply generally to all of these forms.

15 You testified yesterday that at Item 9, that that
16 was your signature on the form. Correct?

17 A Yes.

18 Q You also testified that, of course, that is
19 obviously, James Kay's name and address in the information
20 given below there. Correct?

21 A Yes.

22 Q What is your understanding of the significance of
23 those two items together?

24 A Well, again, it's a process here that where the
25 coordinator would be given permission by the licensee or the

1 license applicant, to make minor corrections to the form.
2 It's my understanding and practice that these corrections
3 are usually related to typos, a longitude and latitude
4 number that didn't come out right, words spelled wrong. No
5 substantive changes to applications, such as frequency or
6 location, like Mount Wilson versus Santiago Peak. No real
7 address changes. Nothing that's substantively -- Again,
8 it's meant for a typo.

9 Q Would you characterize it as obvious clerical or
10 typographical errors?

11 A Yes.

12 Q Would you read to me in Item 9 the last sentence
13 in bold print? Would you read that out loud for me?

14 A "Your signature authorizes NABER to make minor
15 changes and corrections to the FCC Form 574 before it is
16 filed with the FCC."

17 Q So that says before it is filed with the FCC. Do
18 you interpret this as allowing Mr. Kay to amend your
19 application after it is filed with the FCC?

20 A No.

21 Q Do you think it is unusual, or in your experience
22 or within your knowledge, uncommon for a type of an
23 arrangement to be in a frequency coordination form, where
24 someone other than the applicant may be designated?

25 A Oh, it's real common.