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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

OCT 31 1997

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)

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OCT 31 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable Richard L. Sippel
Administrative Law Judge

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

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, and pursuant to the Presiding Judge's Order, FCC 97M-170 (released October 14, 1997), now replies to the "Opposition to Wireless Telecommunications Bureau's Motion to Enlarge Issues" filed by James A. Kay, Jr. (Kay) on October 24, 1997.

2. In its April 9, 1997 "Motion to Enlarge Issues," the Bureau showed that substantial and material questions of fact existed as to whether Kay misrepresented facts or lacked candor in this proceeding by claiming to the Presiding Judge that "Kay has no interest in any of the licenses or stations held by Marc Sobel." The Bureau showed in its motion that Kay had an agreement with Sobel under which Kay "managed " Sobel's 800 MHz stations and received substantial financial and other interests in those stations and licenses. Subsequent discovery revealed that Kay owns all of the equipment comprising Sobel's stations.

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3. In his opposition, Kay primarily argues that the motion should be dismissed as untimely. He then briefly argues that the motion is legally insufficient. For the reasons stated below, the Bureau's motion should not be dismissed on timeliness grounds, and substantial and material questions of fact exist concerning Kay's candor with the Commission. Thus, the addition of a misrepresentation/lack of candor issue is proper.

The Sobel Hearing

4. Several pertinent developments have occurred which could impact the Presiding Judge's ruling on the motion. On February 12, 1997, the Commission instituted a revocation proceeding against Sobel. Marc Sobel, 12 FCC Rcd 3298 (1997). The designation order specified the following issues against Sobel:

- (a) To determine whether Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications have willfully and/or repeatedly violated § 310(d) of the Communications Act of 1934, as amended, by engaging in unauthorized transfers of control of their respective stations to James A. Kay, Jr.;
- (b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications are qualified to be and remain Commission licensees;
- (c) To determine whether the above-captioned applications filed by Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications should be granted.
- (d) To determine whether the above-captioned licenses held by Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications should be revoked.

Kay sought to intervene in the Sobel proceeding and was made a party to the proceeding.

Memorandum Opinion and Order in WT Docket No. 97-56, FCC 97M-43 (released March 24, 1997) (ALJ Frysiak). Judge Frysiak, pursuant to a motion to enlarge issues filed by the Bureau, then added the following issue:

(a) To determine whether Marc Sobel misrepresented material facts or lacked candor in his affidavit of January 24, 1995.

(b) To determine, based upon the evidence adduced pursuant to the foregoing issues, whether Marc Sobel is basically qualified to be and remain a Commission licensee.

Memorandum Opinion and Order, FCC 97M-82 (released May 8, 1997). The issue specified in the Sobel case concerned the same statements at issue with respect to the Bureau's instant motion. Sobel had submitted two affidavits in this proceeding making the statement that "Mr. Kay has no interest in any radio station or license of which I am the licensee." Kay had adopted the same statement in his January 25, 1995 "Motion to Enlarge, Change or Delete Issues." The hearing in the Sobel proceeding was held on July 29 and 30, 1997. Both Sobel and Kay testified at that hearing. The Bureau has filed proposed findings of fact and conclusions of law arguing that Sobel's affidavit misrepresented facts and lacked candor and that all of Sobel's licenses should be revoked. Both Sobel and Kay have filed reply findings challenging the Bureau's position.

5. Judge Frysiak's decision to add the issue in the Sobel proceeding reflects his judgment that substantial and material questions of fact exist concerning the candor of the statements made before the Presiding Judge in this case. Since Kay participated in the Sobel hearing as a party, the record in that proceeding could be entered into evidence in this proceeding. While the issue in this proceeding would be slightly different (because the focus of the issue in this proceeding would be on Kay's intent, not Sobel's intent), the proof on the

two issues would be largely the same. Accordingly, the issue requested by the Bureau would not materially lengthen the hearing.

Timeliness

6. Kay argues that the Bureau's motion should be dismissed as untimely because the Bureau had the management agreement between Sobel and Kay in its possession in March 1995 and because the Bureau did not show good cause for filing after that date. Kay Opposition, pp. 2-5. In fact, the Bureau acted reasonably and complied with Section 1.229(b)(3) of the Commission's Rules by filing its motion within fifteen days after it discovered the inconsistency between the agreement and Kay's representations. Even if the motion does not comply with Section 1.229(b)(3) of the Commission's Rules, the motion meets the standards contained in Section 1.229(c) of the Commission's Rules. Accordingly, the Bureau is entitled to have its motion considered on the merits.

7. In this proceeding, Section 1.229(a) of the Commission's Rules provides that motions to enlarge issues must ordinarily be filed within fifteen days after a summary of the hearing designation order. Section 1.229(b)(3) of the Commission's Rules provides:

Any person desiring to file a motion to modify the issues after the expiration of the periods specified in paragraphs (a), (b)(1), and (b)(2), of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

In this case, a summary of the hearing designation order was published in the Federal Register on January 18, 1995 (60 Fed. Reg. 3642-02). It was not possible for the Bureau to file the motion to enlarge issues within fifteen days after January 18, 1995 because it did not have the management agreement between Sobel and Kay in its possession until, at the earliest, March 1995. Accordingly, the Bureau's motion complies with the first sentence of Section 1.229(b)(3).

8. The last sentence of the section provides that a motion based upon newly discovered facts must be filed within fifteen days after the moving party discovers the facts. In this case, the fact that triggered the Bureau's motion was the inconsistency between the management agreement and Kay's earlier representation that he had no interest in any of Sobel's stations or licenses. The Bureau filed its motion within fifteen days after it actually discovered the inconsistency. Therefore, contrary to Kay's suggestion at n.1 of his opposition (at p. 3), this motion is fundamentally different from the motion the Presiding Judge denied in his Memorandum Opinion and Order, FCC 97-167 (released October 9, 1997). The Presiding Judge found with respect to the earlier motion that the Bureau had knowledge of the pertinent facts on November 13, 1995 but did not file its motion until 1997. Id. at ¶6. Here, the motion was filed within fifteen days after the Bureau discovered the operative fact.

9. The second sentence of the rule states that, except as noted in paragraph (c) of the rule, "the motion will be granted only if good cause is shown for the delay in filing." Certain cases have interpreted this provision to require an examination into whether the movant was

diligent in discovering the facts that formed the basis of this motion (as opposed to just inquiring whether the motion was filed promptly after the facts were actually discovered).

See, e.g., Capitol City Broadcasting Company, 8 FCC Rcd 1726, 1728 (Rev. Bd. 1993).

Under the circumstances of this case, the Bureau acted reasonably in filing its motion when it did. In order to ascertain that a basis for enlargement existed, the Bureau had to compare the management agreement to Kay's January 1995 pleading. Since Kay's pleading had been denied on January 30, 1995 (Memorandum Opinion And Order, FCC 95M-24 (released January 30, 1995)), the Bureau had no reason to refer back to the January pleading.

Moreover, this proceeding was not in active hearing status from June to October of 1995, from June of 1996 to February 1997, and from April of this year until earlier this month. It was only in preparing for the Sobel proceeding that the Bureau had a reason to examine the January 1995 filing and determine that an inconsistency existed. Moreover, unlike in Great Lakes Broadcasting Inc., 6 FCC Rcd 4331 (1991) or Capitol City Broadcasting Company, supra, consideration of this motion will not unduly disrupt the proceeding because the hearing is not scheduled until May of 1998. Thus, while it is conceivable that the Bureau could have filed its motion earlier, under the circumstances of this case, good cause exists for the delay in the Bureau's filing, and the motion complies with Section 1.229(b)(3) of the Commission's Rules.

10. Even if the Presiding Judge determines that the motion is untimely, the Bureau's motion is entitled to consideration under Section 1.229(c) of the Commission's Rules, which directs consideration of an untimely motion to enlarge issues if the motion "raises a question

of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing." The Bureau's motion raises questions of substantial public interest importance because it implicates Kay's basic qualifications to be a Commission licensee. Great Lakes Broadcasting, Inc., supra, 6 FCC Rcd at 4332 ¶9. In order to meet the "probable decisional significance" portion of the test, the Bureau must show that there is "a likelihood that potentially disqualifying allegations will be proven." Id. For the reasons stated below in its discussion of the merits the Bureau has shown such a likelihood. Accordingly, the Bureau's motion is entitled to consideration on the merits.

The Merits

11. Kay's discussion of the merits of the Bureau's motion is tellingly brief. He claims that it is incorrect for the Bureau to claim that he has any interest in Sobel's stations or licenses. He argues that "taken in the context of this proceeding", the statement did not constitute a misrepresentation. Kay Opposition, pp. 5-6. Kay's defense is inconsistent with the plain language of the management agreement, as well as his own and Sobel's testimony in the Sobel proceeding. The requested issue is warranted.

12. The terms of the management agreement, by their very nature, give Kay substantial interests in Sobel's stations. Kay is named the "sole and exclusive agent for the sale of all services provided by the Stations." See Paragraph I of the agreement. Kay is also the "sole and exclusive agent for the management of the Stations' transmitting facilities and associated business. Id., ¶II. Kay is named the sole and exclusive supplier of all equipment

and labor needed to maintain and repair the Stations' facilities. Id., ¶III. Kay has the right to receive the first \$600 of revenue from each station each month, and fifty percent of all remaining revenues. Id., ¶VI. Kay has an option to purchase the stations at any time for \$500 per station. Id., ¶VII. In contrast, Sobel may not sell the stations licensed to him because he is required to hold clear title to the stations until and unless the licenses are assigned to Kay. Id., ¶VII E.

13. Moreover, the record compiled in the Sobel proceeding shows that Kay has more than a mere interest in the Sobel licenses - he controls those licenses. Kay was responsible for finding the frequencies and preparing the applications for the Management Agreement stations. Tr. 73-75.¹ Kay provided all the money and the equipment needed to build the Management Agreement stations (i.e., the 800 MHz stations licensed to Sobel). Tr. 144. When Sobel worked on the stations, he did so as a contractor selected and paid by Kay. Tr. 106-108. Kay made the arrangements to acquire and dispose of the licenses in Sobel's name. Tr. 101, 126-128, 366. Kay's employees were involved in virtually every aspect of the stations' daily operations. Tr. 339-347. Kay paid all the expenses of the Management Agreement stations, including Sobel's legal fees. Tr. 109, 131. The revenues from the Management Agreement stations were deposited in Kay's bank account, and Sobel has not received any of the operating revenues of the stations. Tr. 348. Although the revenue of four of the stations has exceeded the \$600 per month level above which Sobel is entitled to fifty

¹ The references are to transcript citations to the hearing in WT Docket No. 97-56. Copies of the pertinent pages of the transcript are attached to this reply.

percent of the revenue, Sobel has not received any monies pursuant to that provision. Tr. 131-132. These facts are patently inconsistent with Kay's representation that he has no interest in any of Sobel's licenses.

14. Perhaps the most compelling evidence of misrepresentation on Kay's part, however, is his own testimony in the Sobel proceeding. Kay recalls that when he and Sobel met to discuss the affidavit, Sobel asked him about the meaning of the word "interest." Tr. 371. Kay told him that to the best of his knowledge, as it had been explained to him (emphasis added):

It referred to ownership as in a partnership or ownership of stock, **as having a direct financial stake in something**. Being an owner or a stockholder or direct party to something.

Id. Sobel testified that Kay has a direct financial stake in the Management Agreement stations. Tr. 150. He testified that he does not think Kay told him that a direct financial stake is an interest in a business. Id. Kay denied having a financial stake in the licenses, but he admitted that with respect to the stations, he owned the equipment and that he obtains revenues from the stations. Tr. 372. Kay thus admitted he had an interest in Sobel's stations. "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." Leflore Broadcasting Co. Inc., 636 F.2d 454, 462 (D.C. Cir. 1980). Accordingly, there is a more than sufficient basis for specifying a misrepresentation/lack of candor issue against Kay.

Accordingly, the Bureau asks the Presiding Judge to specify the requested misrepresentation/lack of candor issue.

Respectfully submitted,
Daniel B. Phythyon
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October 31, 1997

FCC Received August 12, 1997 @ 2:55 p.m.
Anna G. Bradshaw

WTB
Mr. Schenble
Mr. Knowles-Kalott

FEDERAL COMMUNICATIONS COMMISSION

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)

C O R R E C T E D C O P Y

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1 the operator to change over to Mr. Kay's system?

2 A Right.

3 Q At some point in the early 1990s, you became
4 interested in holding 800 megahertz licenses yourself.
5 Correct?

6 A Correct.

7 Q You knew at that time that Mr. Kay already held
8 800 megahertz licenses. Correct?

9 A Right.

10 Q You asked Mr. Kay if he would help you get
11 involved with 800 megahertz licenses. Correct?

12 A Yes.

13 Q Mr. Kay agreed to help you. Correct?

14 A Yes.

15 Q Now, Mr. Sobel, please direct your attention to
16 WTB Exhibit 1, and my question for you is, do you recognize
17 these as applications filed in your name for 800 megahertz
18 stations?

19 A Yes.

20 Q In terms of how these applications were prepared,
21 Mr. Sobel, is it correct that Mr. Kay would do the research
22 needed to determine what frequencies would be available for
23 you to apply for?

24 A Yes.

25 Q He would then suggest which frequencies for you to

1 apply for?

2 A Yes.

3 Q He would then review with you who else was on
4 channel, where the repeater would be located, and the need
5 for the repeater?

6 A Yes.

7 Q Mr. Kay would then prepare the application?

8 A Most of the time.

9 Q Were there any times in which you prepared the
10 applications for the 800 megahertz stations personally?

11 A Yes.

12 Q Do you remember any particular instance in doing
13 so?

14 A When I did it, I did it at his office. I don't
15 remember exactly which ones.

16 JUDGE FRYSIAK: Would it be all of them were done
17 in his office?

18 THE WITNESS: He had the specialized software to
19 do it, so yes.

20 BY MR. SCHAUBLE:

21 Q That was software Mr. Kay had available on his
22 computer to prepare these applications. Correct?

23 A Yes.

24 Q The computer had the information necessary to fill
25 out and prepare the application. Correct?

1 A Yes.

2 Q Do you remember the name of the program?

3 A It is put out by Slattery software.

4 Q After the application was prepared, you would then
5 review the application?

6 A Of course.

7 Q Do you remember editing the applications a couple
8 of times when Mr. Kay misspelled your name?

9 A Yes, most people do.

10 Q Those are the only types of edits you remember
11 making to the application?

12 A Specifically, yes.

13 Q Mr. Sobel, if I could direct your attention to
14 page five of Exhibit 1. The page is labeled at the top,
15 "Notice to Individuals Required by Privacy Act of 1974." Do
16 you see about three quarters of the way down the page, there
17 is certain writing which is written upside down on this
18 copy?

19 A Yes, I see it.

20 Q I believe the writing states, "All stations to
21 use," and there are certain admission designators there. Do
22 you see that?

23 A Yes.

24 Q Do you know whose handwriting that is?

25 A I believe it is James Kay's.

1 stipulation that would help you and then clarify it. As to
2 the following call signs, KNBT 299, to which I would
3 reference, by the way, Exhibit 6, as to call sign WNYR 424,
4 reference to Exhibit 10, which is a copy of the license, and
5 WNPY 680, Exhibit 13, which is a copy of the license. As to
6 those three call signs, we would stipulate that the
7 authorizations for those call signs came to Mr. Sobel by way
8 of assignment of license.

9 Without checking a lot of historical records, et
10 cetera, however, we cannot stipulate as to whether or not
11 Mr. Sobel independently attained authorizations on co-
12 channel frequencies for the same stations.

13 MR. SCHAUBLE: That would be satisfactory. I
14 accept the stipulations.

15 JUDGE FRYSIAK: All right. The stipulation is
16 noted.

17 (Pause.)

18 BY MR. SCHAUBLE:

19 Q Now, Mr. Sobel, with respect to the licenses which
20 you received being an assignment, Mr. Kay made the
21 arrangements for you to acquire those licenses. Correct?

22 A Yes.

23 Q You never put up any money to purchase any of
24 those licenses. Correct?

25 MR. KELLER: I object. There is no foundation in

1 problem that needs fixing?

2 A Yes.

3 Q Is it correct that it was understood that, at the
4 time you reached the oral agreement, when you did work
5 repairing, installing, and maintaining the Management
6 Agreement stations you would be paid an hourly fee by Mr.
7 Kay for this work?

8 A Yes.

9 Q It is correct that you are also paid an hourly fee
10 by Mr. Kay when you repair, maintain, or install equipment
11 on the stations he owns or other stations he manages.

12 Correct?

13 A Yes.

14 Q In addition to this contract technician work you
15 do for Mr. Kay, is there other work you do for Mr. Kay?

16 A It's funny, but I am his consultant in many ways,
17 too. I provide him assistance technically with his systems
18 and other of his clients' systems. I have done, as you
19 mentioned earlier, trying to secure licenses on my
20 frequencies and some of his frequencies. I turn on and off
21 his repeaters. That may not be everything, but that is what
22 I can recall at this point.

23 Q Do you normally deal with problems that are more
24 difficult or more sensitive than other technicians of Mr.
25 Kay might handle?

1 A Yes, because I know a lot more than they do. Let
2 me just add to that, I am in business as a radio dealer. My
3 knowledge extends well beyond just a technical, how to fix a
4 radio.

5 Q Is it correct that all of the work you do with Mr.
6 Kay, you are paid an hourly fee, or is there work in which
7 you are compensated on some other basis with him?

8 A That's kind of like you lawyers. You charge by
9 the hour. I do the same thing.

10 Q So it is all on the basis of an hourly fee,
11 correct?

12 A Yes.

13 Q Mr. Kay provided the equipment needed to construct
14 the Management Agreement stations. Correct?

15 A Yes.

16 Q You performed some of the work in actually
17 constructing and installing the stations. Correct?

18 A That was our deal, yes.

19 Q Would it be correct to say that Mr. Kay, and a
20 couple of his former employees, may have been involved in
21 performing some of the construction work, but you did most
22 of the work yourself?

23 A I did 99.99 percent of the work.

24 Q When you performed that work, you then sent Mr.
25 Kay an invoice for that work?

1 A Yes.

2 Q Mr. Kay paid that invoice?

3 A Yes.

4 (Pause.)

5 Q Now, Mr. Sobel, there came a time when you and Mr.
6 Kay reached an agreement that Mr. Kay would have an option
7 to purchase the Management Agreement stations for \$500.00
8 each. Correct?

9 A Yes.

10 Q When did that occur?

11 A I don't recall exactly.

12 Q Would it be correct that it was at some point
13 between the time you have the oral agreement we have been
14 discussing previously with Mr. Kay, and the time you entered
15 into a written Management Agreement with Mr. Kay, in October
16 of 1994?

17 A Yes.

18 Q Mr. Sobel, I would like to direct your attention
19 to WTB Exhibit 38. Turning to page nine of the document,
20 under Marc Sobel, licensee, is that your signature?

21 A Yes.

22 Q Is this document the Radio System Management and
23 Marketing Agreement you entered into with Mr. Kay on October
24 38, 1994?

25 A Yes.

1 Q You asked that your oral agreement with Mr. Kay be
2 reduced to writing because you knew Mr. Kay was having
3 problems with the FCC at this time, and parties had
4 complained about the relationship between you and Mr. Kay.
5 Correct?

6 A Yes.

7 JUDGE FRYSIAK: Who was complaining? Did you say
8 in part?

9 MR. SCHAUBLE: Parties, Your Honor.

10 JUDGE FRYSIAK: Parties.

11 BY MR. SCHAUBLE:

12 Q Now, this document was prepared by the law firm
13 Brown and Schwaninger. Correct?

14 A Yes.

15 Q Now, Brown and Schwaninger had been your FCC
16 attorneys since the early to mid 1990s?

17 A Yes.

18 Q Mr. Kay first introduced you to that law firm.
19 Correct?

20 A Yes.

21 Q Under your agreement with Mr. Kay, Mr. Kay was
22 responsible for paying any and all legal fees relating to
23 the Management Agreement stations. Correct?

24 A Yes.

25 Q When Brown and Schwaninger prepared this

1 approval. Correct?

2 A Correct.

3 Q Mr. Sobel, to your understanding, you believe
4 there are three stations that at one time were licensed to
5 you and managed by Mr. Kay, either pursuant to your oral
6 agreement or your written agreement, that were sold.
7 Correct?

8 A Yes.

9 Q At least one of those stations was sold to the
10 city of Los Angeles?

11 A No.

12 Q Or were sold to William Matteson?

13 A Yes.

14 Q Was that station sold for either \$70,000.00 or
15 \$90,000.00?

16 A I don't remember the exact amount, but that's what
17 I told you before.

18 Q That is what you testified to in your deposition.
19 Correct?

20 A Yes.

21 Q Of that amount, you received \$20,500.00 of that
22 money. Correct?

23 A Yes.

24 Q To your knowledge, James Kay received the rest of
25 that money?

1 A That was to pay for his expenses.

2 Q What year did you receive the \$20,500.00?

3 A I think it was '95, but I'm not sure. '95 or '96.

4 Q Of the \$20,500.00, was \$500.00 of that a fee paid
5 by Mr. Kay to you pursuant to the option clause of the
6 agreement?

7 A No.

8 Q You said that some of the money that went to Mr.
9 Kay in connection with the sale of the station was
10 reimbursement of expenses that Mr. Kay had?

11 A That's my understanding.

12 Q What sort of expenses?

13 A It costs a lot of money to clear the channel, to
14 buy other stations on the frequency, to cancel them, to move
15 radios, et cetera. I don't think he made that much money on
16 the whole deal. I made more than he did.

17 Q But it was Mr. Kay who incurred these expenses.
18 Correct?

19 A Yes.

20 Q How much money did you receive from the proceeds
21 of the sales of the other two stations?

22 A I received \$500.00 from one, and the other one was
23 a trade, so there was no money exchanged.

24 Q Do you know how much money was paid total for the
25 sale of the second station?

1 A No.

2 Q The second station which you received \$500.00 for,
3 was the \$500.00 an option fee paid by Mr. Kay?

4 A No.

5 Q You mentioned the third station, was that a trade
6 of one license for another license?

7 A Yes.

8 Q Did you receive the license in trade yourself, or
9 did Mr. Kay?

10 A I received a cancellation of one of my other
11 stations. It increased its value and I helped the other guy
12 increase his value on the other station.

13 Q Please turn to WTB Exhibit 39, page two, paragraph
14 one, letter paragraph A underneath that. Is it correct that
15 under this provision Mr. Kay has a sole and exclusive right
16 to negotiate contracts with customers?

17 A Yes. He was my reseller.

18 Q He has the legal right to determine what rates
19 would be charged customers. Correct?

20 A Not exactly.

21 Q But he has the sole and exclusive right to
22 negotiate these contracts. Correct?

23 A Yes, but my approval appears somewhere else in the
24 agreement that I have a right to review the contract and if
25 I'm not happy with it, I can withhold acceptance. At that

1 39. Specifically, XIII, "Costs of Operation." Mr. Kay is
2 responsible for all of the expenses relating to the
3 Management Agreement stations. Correct?

4 A Yes. You asked that before.

5 Q On occasions, you buy parts yourself for the
6 Management Agreement stations. Correct?

7 A Yes.

8 Q You are normally reimbursed by Mr. Kay for that
9 expense. Correct?

10 A Yes.

11 Q Except for an instance where you may have missed
12 billing Mr. Kay for a part, is it correct that Mr. Kay has,
13 in fact, paid all the expenses relating to the Management
14 Agreement stations?

15 A Yes.

16 Q Now, except for the money you have received
17 working on the stations, the hourly fees you have received
18 from Mr. Kay, and the money you received in connection with
19 the sale of the stations, you have not received any money
20 from the Management Agreement stations. Correct?

21 A Not cash money, but paper money I have.

22 Q I'm sorry, paper money?

23 A The stations have a value, so in essence, I have
24 received something from them.

25 Q But other than the two instances you described,

1 you have not received any money in terms of cash or check.

2 A No.

3 Q Mr. Sobel, please turn to page four, paragraph
4 six. As the agreement reads, if any station grosses over
5 \$600.00 a month, all revenues over that amount are equally
6 split between the parties. Correct?

7 A Yes.

8 Q How many stations currently are subject to the
9 Management Agreement?

10 A Fifteen.

11 Q A few of the stations have exceeded \$600.00 a
12 month in revenue. Correct?

13 A Four of them.

14 Q But it is correct that the way you and Mr. Kay
15 have implemented the agreement, Mr. Kay gets to keep all the
16 revenue until the total revenue from all the stations
17 exceeds \$9,000.00 a month, i.e., \$600.00 times 15 stations.

18 A I look at the stations as a system of stations,
19 and that is correct.

20 Q The last time you looked, what was the total
21 revenue level of the Management Agreement stations?

22 A Somewhere between six and seven thousand dollars.

23 Q When did you last look?

24 A A few months ago.

25 Q Mr. Sobel, please turn to WTB Exhibit 26. This is

1 frequencies for you to apply for?

2 A I asked him to, yes.

3 Q He prepared the applications?

4 A Most of them.

5 Q He provided the equipment and the money needed to
6 build the stations?

7 A That was our deal.

8 Q His personnel performed services with respect to
9 these stations?

10 A That was part of our deal.

11 Q The work you do on the stations, you do as a
12 contractor for him. Correct?

13 A Yes. It was part of our deal.

14 Q He is the one who sells the stations?

15 A If he wants to, or if I agree to do it, yes.

16 Q He pays all the expenses relating to the stations?

17 A That's why he got \$600.00. Yes.

18 Q The operating revenue from these stations go
19 directly in his bank account?

20 A The first \$600.00 do, yes.

21 Q As a matter of fact, the only money you have
22 received from these stations is the money you received for
23 working as a contractor and the money you received in
24 connection with the sale of the stations. Correct?

25 A Yes.