

1           A     I think it's both. I have control and ownership  
2 of a station, and as far as a deed goes, Your Honor, the FCC  
3 gave me a piece of paper which could be considered a deed.  
4 It had my name on it, not Mr. Kay's.

5           Q     Mr. Sobel, would you agree that Mr. Kay has a  
6 direct financial stake in the Management Agreement stations?

7           A     Yes.

8           Q     Didn't Mr. Kay tell you in January, 1995, that a  
9 direct financial stake is an interest in the business?

10          A     No, I don't think so.

11          Q     Mr. Sobel, turn to the fifth sentence of this  
12 affidavit. Specifically, the words, "I am not an employer  
13 or employee of Mr. Kay." Do you see that, sir?

14          A     Yes.

15          Q     As you have testified previously, you do all sorts  
16 of work for Mr. Kay for an hourly fee. Correct?

17          A     I am a contractor. He pays me as a consultant to  
18 do work for him, and he pays me as another radio shop to do  
19 work for him also.

20          Q     You did nothing in this affidavit to describe the  
21 sort of work you did for Mr. Kay. Correct?

22          A     There wasn't appropriate subject material for what  
23 this affidavit was submitted for.

24          Q     Isn't it deceptive to tell the Commission you  
25 weren't Mr. Kay's employee without clarifying that you did

1 But again, looks very much like a style that I use.

2 Q Turning to Pages 4 through 7 of the exhibit, do  
3 you see certain information is marked out on these invoices?

4 A Yes.

5 Q Accept my representation that the information that  
6 was marked out is the name and address of Lucky's Two-Way  
7 Radio. Did you mark out this information?

8 A It's entirely probable that I did.

9 Q Do you know why this information was marked out?

10 A Probably because it was irrelevant to the reply.

11 Q But you do not have a specific recollection  
12 marking out this information?

13 A No.

14 MR. SCHAUBLE: Your Honor, I just note for the  
15 record that these are among exhibits in which the Bureau, in  
16 the court reporter copies, redacted certain information  
17 concerning the names of customers of these stations.

18 JUDGE FRYSIK: Yes.

19 BY MR. SCHAUBLE:

20 Q Mr. Kay, does Barbara Ashaur work for you?

21 A Yes, she does.

22 Q What are her duties?

23 A She performs many duties, primarily, billing,  
24 receivables. She runs our accounting department, and also  
25 serves sometimes as my secretary.

1 Q Who does she report to?

2 A She works pretty autonomously, but I guess her  
3 main report is to me.

4 Q Is it correct that she provides services both with  
5 respect to stations you own and stations you manage?

6 A She actually works for Buddy Corporation, and  
7 the -- She works on all the stations. Whether they're  
8 licensed to me, to Marc, or to customers. Frankly, she  
9 doesn't know which one she's working on. She has no need  
10 to.

11 Q Let me ask you this, Mr. Kay. To the extent you  
12 have employees who work on stations you own and stations you  
13 manage, would any of those employees have any reason to know  
14 whether those stations are stations you own or stations you  
15 manage?

16 A The employees, by and large, do not know whether  
17 the station is licensed to me, licensed to Marc, licensed to  
18 a customer, or licensed to someone else. They don't know.  
19 All they need to know is what frequency they need to check,  
20 or what bills to send out to what customer.

21 Q Ophelia Nunez works in your office. Correct?

22 A Yes.

23 Q What are her duties?

24 A She primarily does accounts receivable. Does  
25 posting of monies that come in. I believe she also bills.

1 She prepares bank deposits. She works on legals. She  
2 prepares summons and complaints. She reports primarily to  
3 Barbara. These are the things that I've seen her do. I  
4 don't go back there and watch to just see what she does.

5 Q Damon Crowley, Sr. works for you. Correct?

6 A Yes.

7 Q What are his duties?

8 A Again, he reports directly to Barbara. And I see  
9 some of the things that he does. Primarily, he's been doing  
10 secretarial work, sorting of files and accounts receivable,  
11 calling on the phone, asking where's the money. He's also  
12 been working on legals.

13 Q He reports to Barbara Ashaur. Correct?

14 A Correct.

15 Q Does Ken Schultz work for you?

16 A Yes, he does.

17 Q Is it correct that until recently, he was the  
18 acting general manager or service manager for Southland  
19 Communications?

20 A Correct.

21 Q What are his current duties?

22 A Lead technician, bench tech.

23 Q What are his duties as a lead technician?

24 A He repairs radios.

25 Q Who does he currently report to?

1 A Mark Hammerquist.

2 Q And Mr. Hammerquist's position is?

3 A General manager.

4 Q Randy French works for you. Correct?

5 A Yes, he does.

6 Q He is a technician?

7 A Yes, he is.

8 Q Who does he report to?

9 A I don't know if there's been a real pecking order  
10 set there. I'd say offhand it'd be both, too -- Ken is the  
11 lead tech. And he also would answer to Mark Hammerquist.

12 Q What are Mark Hammerquist's duties?

13 A He's the general manager. He moved from a  
14 position of salesman to the general manager. He oversees  
15 the operation of Buddy Corporation. That the salespeople  
16 are out selling. That the technicians are fixing radios.  
17 That the service writer is dispatching people. That the  
18 installer is doing the work. He also receives some of the  
19 financial matters of the company.

20 Q Is it correct that each of these individuals  
21 perform their functions with respect to the stations that  
22 are licensed to Mr. Sobel and managed by you, as well as  
23 other stations that you own or manage?

24 A Well, it's difficult to explain, but I'll try it  
25 this way. The -- All these people -- With the exception of

1 Mark Hammerquist, all these people do on occasion, do work  
2 with the managed stations, the accounts receivables,  
3 payables, billings and collections.

4 They deal with the customers. Some of whom will  
5 use just my stations. Some will use my stations and some of  
6 the managed stations. Some of them will only use the  
7 managed stations. Some of whom operate on community  
8 repeaters. When -- Should a repeater fail, one of the  
9 technicians, either Ken or Randy, will check it out.

10 They won't even know, unless they've asked for  
11 some reason, or have it from some stray knowledge, which  
12 category of machine they're actually testing. Whether it's  
13 one licensed to me, licensed to Marc, licensed to the  
14 customer, licensed to some other person whose station I  
15 manage. They wouldn't know. They don't need to know. They  
16 only need to find out whether it works or not.

17 JUDGE FRYSIAK: I guess the answer is yes.

18 THE WITNESS: Well, I'm trying to be precise, Your  
19 Honor, because every time I blank an answer or something,  
20 usually it's pinned down to me that I wasn't 100 percent  
21 correct.

22 BY MR. SCHAUBLE:

23 Q With respect to what I will refer to as the  
24 management agreement stations, i.e., the stations licensed  
25 to Mr. Sobel, but which you manage, pursuant to a management

1 agreement, do you understand that phrase?

2 A Yes.

3 Q Who performs the sales duties for the management  
4 agreement stations?

5 A There is no one specifically assigned to that.

6 Q It is correct that your salespeople sell the  
7 management agreement stations, as well as stations you own  
8 and other stations you manage?

9 A Well, the salesman go out and sell radios. At --  
10 When they've made a sale, that they specifically assign to  
11 the system, they'll come to the employees that, primarily,  
12 Barbara, and say, I need code assignments or frequency  
13 assignments for their customer. At which point in time,  
14 either Marc Sobel or myself will assign codes. Sometimes  
15 Barbara Ashaur does herself, too. She has a capability of  
16 doing that, of assigning codes. And the customer will get  
17 put on the air.

18 The salesman doesn't know what the difference  
19 between a managed or non-managed or community repeater is.  
20 It's not -- They all come in, and we also get referrals from  
21 other radio shops. And they're all kind of the same  
22 fashion. Does this help?

23 Q This helps. Let's go into the process a little  
24 more of what happens when a customer comes into your shop  
25 and wants service. Is it correct that the overriding

1 consideration is the customer's needs in determining what  
2 type of service the customer receives?

3 A Of course. If we don't sell something that works,  
4 he ain't going to stay.

5 Q When, in deciding where to place a customer, is it  
6 correct that you look at factors such as where the customer  
7 needs service, how much air time the customer needs, when  
8 the customer will need air time, and matters such as that?

9 A What band he's on, whether he's conventional or  
10 whether he's trunked. Yes. That's correct.

11 Q Is it correct that usually the salesperson will  
12 make the initial recommendation as to where a particular  
13 customer should be placed?

14 A About half the time. A lot of customers,  
15 especially recently, have been switching off of other  
16 systems. In which case, I guess you call it a no brainer.  
17 If they were on Santiago system from somebody else, is  
18 getting shut down the Nextel, they say, can you put us up on  
19 Santiago Peak. Well, that's an easy one.

20 Q Is it correct that in determining what system a  
21 customer is placed on, no consideration is given as to  
22 whether the system in question is owned by you, Mr. Sobel,  
23 or somebody else?

24 A That, to a degree comes with, first of all, which  
25 site is needed and whether one of the stations that I have

1 would be most suitable, or whether one of Mr. Sobel's  
2 stations or one of the other managed stations would be more  
3 suitable.

4 Q But you look as to whether the station is  
5 suitable, not whether the station is owned by you or Mr.  
6 Sobel or somebody else. Correct?

7 A It varies. There's not a yes or no to that.  
8 There are a lot of factors that are weighed.

9 Q Okay.

10 JUDGE FRYSIAK: How is the factor of ownership  
11 weighed?

12 THE WITNESS: Pretty much evenly. I don't find  
13 any particular preference to my own licensed stations or the  
14 managed stations. The idea is to keep them all loaded.

15 JUDGE FRYSIAK: The idea is what?

16 THE WITNESS: The idea is to keep them all loaded  
17 and in use. If we have a customer who drops off a managed  
18 station, most likely the next customer that it suitable for  
19 that station will be put on it, when we put back on that  
20 station to bring it back up to keep it in use. The idea is  
21 to keep them all in use.

22 JUDGE FRYSIAK: All right. I am still getting the  
23 idea that ownership is not an important factor in your  
24 operation.

25 THE WITNESS: It really isn't.

1 BY MR. SCHAUBLE:

2 Q Is it correct that generally it would be Barbara  
3 Ashaur who would take the first crack at assigning a  
4 specific frequency or code to a customer?

5 A Yes. Several of them she takes care of herself.  
6 She has the capability of assigning, if I were to call I.D.  
7 codes for the customers. If she requires specific  
8 frequencies, generally, she gets Marc or my assistance.

9 Q Okay.

10 A That goes beyond her capability.

11 Q If she needs to check with on those frequencies or  
12 other matters, she would check with either Mr. Sobel or you,  
13 regardless of whether it is a station you own or a station  
14 Mr. Sobel owns. Correct?

15 A Correct. Marc does an awful lot of the assigning  
16 of frequencies of the stations that are licensed to me.

17 Q Once that is determined, Barbara Ashaur would then  
18 generate the request to turn on the customer?

19 A Correct.

20 Q And then, either Mr. Sobel or yourself would  
21 actually turn on the customer's service?

22 A It's been Mr. Sobel for doing most of that work  
23 for quite some time.

24 Q Would it be correct to say that he turns on  
25 customers about two-thirds of the time, both with respect to

1 stations you own and stations you manage?

2 A If not, slightly more.

3 Q When Mr. Sobel does this work, you pay him an  
4 hourly fee for this work. Correct?

5 A Whatever he bills me.

6 Q And he bills you on an hourly basis. Correct?

7 A Generally.

8 Q Is there a time he bills you on some other basis?

9 A Occasionally, he's put some fixed dollar, if I  
10 recall correctly.

11 JUDGE FRYSIK: Occasionally what?

12 THE WITNESS: He puts a fixed amount down for some  
13 of the services he's done. But usually, it's on those bills  
14 where he puts it down by hour. Frankly, I don't check his  
15 bills that much.

16 BY MR. SCHAUBLE:

17 Q Now, does the revenue that comes in from the  
18 management agreement stations, go into the same bank account  
19 that revenues from stations you own goes into?

20 A It's the only real manageable way to have it.

21 Q Is it correct that some of your customers utilize  
22 both stations you own and the management agreement stations?

23 A A lot of them do.

24 Q Approximately how many such customers would there  
25 be?

1 believe I was.

2 Q Why did you ask for that provision?

3 A Well, I'm writing five year contracts with my  
4 customers to resell air time on Mr. Sobel's stations. If  
5 Mr. Sobel sold a station, I've got five year contracts, and  
6 I may or may not be able to honor. And I don't want to get  
7 left, how do I say, high and dry, without being able to meet  
8 my customer's needs on the stations that I had managed. I  
9 need somehow or other, to protect myself having customers at  
10 Mr. Sobel's stations.

11 Q Is it correct that you arranged for the sale of  
12 certain management agreement stations?

13 A One that I recall.

14 Q That was a station that was sold to Henry Matson?

15 A Yes.

16 Q How much was that station sold for?

17 A I don't remember precisely. I think I told you it  
18 was somewhere between \$70,000 to \$90,000. It may have been  
19 as high as a \$100,000, but I don't remember precisely.

20 Q Of the sale proceeds, how much of the money did  
21 you receive?

22 A Well, it wasn't a percentage.

23 Q How much money did you receive from the proceeds  
24 of that sale?

25 A Well, I received \$20,000 less than what the sale

1 A They're also Marc's attorneys.

2 Q Is it correct you called Mr. Sobel and told him  
3 your attorney had pleadings to file, and asked him to come  
4 in and review this affidavit?

5 A Well, I received the package. I read it. I  
6 talked to my attorneys, and I called Mr. Sobel, and said  
7 that there was an affidavit that my attorneys wanted him to  
8 read. And if correct, execute it.

9 Q And Mr. Sobel, in fact, came in and reviewed the  
10 affidavit. Correct?

11 A Correct.

12 Q In fact, Mr. Sobel had a question for you about  
13 the affidavit. Correct?

14 A I believe he may have had two.

15 Q One of the questions was he asked you about the  
16 meaning of the word "interest" in the affidavit. Correct?

17 A Yes.

18 Q You told him that, to the best of your knowledge,  
19 as it had been explained to you, it referred to ownership as  
20 in a partnership or ownership of stock, as having a direct  
21 financial stake in something. Being an owner or a  
22 stockholder or direct party to something. Correct?

23 A Correct.

24 Q Mr. Kay, isn't it true that you have a direct  
25 financial stake in the management agreement stations?

1           A     How do you mean? I mean, I'd suffer a financial  
2     loss if they went away. If Marc Sobel sold them, I'd have  
3     to move some of my customers.

4           JUDGE FRYSIAK: On an ongoing basis, do you have a  
5     financial stake in those stations?

6           THE WITNESS: Not in the licenses.

7           BY MR. SCHAUBLE:

8           Q     But you have a stake in the stations, don't you?

9           A     Well, I have some hardware up there. If they  
10    wouldn't be doing that, they'd be doing something else.

11          Q     The revenues from these stations go into your bank  
12    account. Correct?

13          A     Why I wouldn't get the -- I'd lose the revenues  
14    that I'm entitled to collect pursuant to my agreement with  
15    Mr. Sobel.

16          Q     Is it also correct that you can buy these stations  
17    at any time for \$500 each?

18          A     Pursuant to the agreement, that's correct. But  
19    that's an option, and it's subject to Commission approval.

20          MR. SCHAUBLE: No further questions, Your Honor.

21          JUDGE FRYSIAK: All right.

22          MR. KELLER: I have very few questions.

23                                CROSS EXAMINATION

24          BY MR. KELLER:

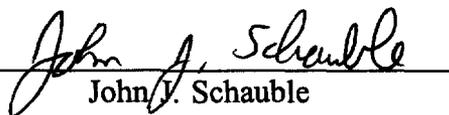
25          Q     Mr. Kay, do you have any large repeater customers?

CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 31st day of October, 1997, sent by first class mail, copies of the foregoing "Reply to Opposition to Wireless Telecommunications Bureau's Motion to Enlarge Issues" to:

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