

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

DOCKET FILE COPY ORIGINAL

In the matter of

MARC SOBEL

Applicant for Certain Part 90 Authorizations in the
Los Angeles Area and Requestor of Certain
Finder's Preferences

MARC SOBEL AND MARC SOBEL
D/B/A AIR WAVE COMMUNICATIONS

Licensee of Certain Part 90 Stations in the
Los Angeles Area

JAMES A. KAY, JR.

Licensee of one hundred fifty two Part 90
Licenses in the Los Angeles, California area

To: The Commission

WT Docket No. 97-56

RECEIVED

DEC 8 - 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 94-147

EMERGENCY MOTION FOR SPECIAL RELIEF

Marc D. Sobel d/b/a Air Wave Communications ("Sobel"), by his attorney, hereby submits this emergency motion for special relief. Specifically, Sobel asks the Commission to stay the effectiveness of the *Memorandum Opinion and Order* ("MO&O") (FCC 97M-201; issued 5 December 1997; to be released 9 December 1997) issued by Administrative Law Judge (ALJ) Richard L. Sippel in WT Docket No. 94-147 (copy attached). In support of this motion, the following is respectfully shown:

1. On 28 November 1997 the Commission released the *Initial Decision of Administrative Law Judge John M. Frysiak* (FCC 97D-13), wherein ALJ Frysiak recommended, *inter alia*, findings and conclusions that Sobel had misrepresented to and lacked candor with the Commission, principally on the basis of the perceived inconsistency between a 30 December 1994 agreement between Sobel and James A. Kay, Jr., and a 24 January 1995 affidavit that was filed by Kay in WT Docket No. 94-157. As the Commission is aware, Sobel intends to submit a timely appeal of the initial decision, see Sobel's 2 December 1997 *Motion for Extension of Time* in WT Docket No. 97-56, which will result in an automatic stay of the effectiveness of the initial decision. 47 C.F.R. §1.276(d)(1) ("The timely filing of exceptions ...

0214

shall stay the effectiveness of the initial decision until the Commission's review thereof has been completed. ").

2. Sobel objects to the provisions of the *MO&O* authorizing the Bureau to question Sobel on matters relating to WT Docket No. 97-56. Allowing the Bureau to depose Sobel regarding the specific matters at issue in his hearing before the initial decision has become effective and before he has even had the opportunity to present his appeal is in error. It is extremely unfair for Sobel to have to undergo discovery on matters simultaneously with his prosecution of an appeal of those same issues. Sobel therefore respectfully asks the Commission to stay the effectiveness of the *MO&O* insofar as it authorizes the Bureau to depose Sobel on matters within the scope of the issues in WT Docket No. 97-56 prior to a final Commission ruling in that proceeding. The requested stay is required to protect Sobel's procedural due process rights. Moreover, it will not unduly prejudice the Bureau. In the context of WT Docket No. 97-56, the Bureau has already had full discovery on this issue, including extensive document production and depositions of both Sobel and Mr. Kay, as well as a full hearing on the subject. It is therefore not necessary to make this further imposition on Sobel before he has even had an opportunity to appeal the initial decision.

3. Even if it were otherwise proper for the Bureau to depose Sobel on matters within the scope of WT Docket No. 97-56, Sobel has not been given adequate notice to allow for any such examination at the deposition scheduled for tomorrow, Tuesday 9 December 1997, in Los Angeles. The *MO&O* providing for such questioning was issued on Friday 5 December 1997, less than two business days prior to the scheduled deposition, and is apparently not being officially released until Tuesday 9 December 1997, the actual day of the deposition.¹ Pursuant to Section 1.315(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.315(a)(3), Sobel is entitled to 21 days written notice of the matters on which he will be examined. To spring an entirely new line of inquiry on him on the eve of the deposition is entirely improper and in direct violation of the procedural safeguards of Section 1.315(a)(3).

4. For the reasons stated above, Sobel has been advised by counsel not to answer any questions relating to the issues designated in WT Docket No. 97-56 pending Commission action on this

¹ ALJ Sippel did not contact Sobel to offer him an opportunity for comment prior to issuing the *MO&O*, nor did he make any attempt to contact Sobel upon issuance of the *MO&O*. Counsel for Sobel was advised of the *MO&O* by counsel for Kay.

motion. Sobel will, however, voluntarily appear at the scheduled deposition and answer, to the extent of his personal knowledge and subject to valid legal objections, questions relating to the issues designated in WT Docket No. 94-147.

WHEREFORE, it is requested that the Commission stay the effectiveness of the MO&O to the extent that it permits the Bureau to question Sobel on matters within the scope of WT Docket No. 97-56 pending final Commission action in that proceeding. In the alternative, it is requested that the Commission declare that any deposition of Sobel on matters within the scope of WT Docket No. 97-56 may not proceed until Sobel has been afforded 21 days written notice thereof.

Respectfully submitted,

MARC D. SOBEL D/B/A
AIRWAVE COMMUNICATIONS



By: Robert J. Keller
Its Attorney

Law Office of Robert J. Keller, P.C.
4200 WISCONSIN AVE NW #106-233
WASHINGTON DC 20016-2143

Telephone: 301-229-8875
Facsimile: 301-229-8875
Email: rjk@telcomlaw.com

Dated: 8 December 1997

