A. No, he did not.

Exhibit RL-2, Transcript at 18-19. The so-called interference that the School District experienced in January of 1992 was actually nothing more than activity on the same channel generated by a legitimate user of a validly licensed repeater located more than 70 miles from the repeater serving the School District, but at greater power. *Id.* at 16-17. Hollingsworth, as a management-level official in the FCC office that issues these licenses, had constructive notice of this fact. He also must have had actual knowledge of it based on his telephone conversations and interview with Lewis. Hollingsworth nonetheless drafted a sworn statement suggesting that the Hyster incident was deliberate interference by Kay, and Hollingsworth himself thereafter swore, under oath, that Lewis had actual knowledge of deliberate interference by Kay.

93. The Lewis statement then has the following passage:

> ... I got a call from James Kay who said the same things Kirk had told us and said he could take care of the problem. Mr. Kay said that he and Don Kirk owned a repeater we could use but that we would have to change our license to switch from Majeska Peak to his peak. Don Kirk then set it up so we would use their repeater for one year.
>
> The paperwork for the service was handled by a woman named Agnes Pennington. I signed the repeater agreement and later got a new license in the mail. I didn't look at it at the time, but merely put it in the file without noticing it had been changed from a GP (special emergency) to a GB (conventional business) license. I know that when I signed up for the new repeater service I never intended to change the FCC license, and I never authorized Ms. Pennington or Don Kirk to make the change. I did sign the application that switched us from a licensee to end user, but I didn't realize the consequences of what I had signed. I only intended to move the repeater service from one peak to another to clear up the interference problem, and Don Kirk told me that it wouldn't affect the license.

Exhibit RL-1 at 2. Hollingsworth had Lewis state, under oath, that Kay was responsible for (a) changing the School District's license from a GP to a GB without Lewis's knowledge, and (b) improperly converting the School District's license to an end user authorization. If Hollingsworth did not know that both assertions were entirely false, he is unconscionably incompetent.

94. Agnes Pennington is not a Kay employee or agent. Rather, she is an independent application preparation consultant who handled the School District's licensing before Kay became involved. Kay has never relied on Pennington to obtain agreements or applications on his behalf. If Hollingsworth had simply contacted Pennington, he would have learned this. Kay did not become involved with Lewis or the School District until 1992, after the School District began to hear Hyster on the channel. The change of the license from a GP to a GB occurred before that, apparently in 1991. Exhibit RL-3 is a copy of the School District authorization issued on May 26, 1987. This appears to have been issued a "GP" or Public Safety / Special Emergency Radio Service authorization. Exhibit RL-4 is a series of documents showing that, in August of 1991, Pennington prepared a modification application on behalf of the School District. As indicated in those documents, Pennington prepared the application as a GP (Public Safety / Special Emergency), but submitted it for frequency coordination to NABER (The National Association of Business and Educational Radio). NABER was not the appropriate frequency coordinator for GP applications. Apparently NABER changed the "GP" to a "GB" before tendering the application to the FCC. The Commission issued the modified authorization as a GB. Exhibit RL-5 s a copy of the modified authorization, bearing the GB indicator. It was issued on November 13, 1991, well before Kay first became involved with the School District. The distinction between "GP" and "GB" would have been of little practical consequence to the School District. Moreover, while Pennington appears to have erred by sending a GP application to NABER, the resulting correction to GB was ironically proper because under applicable regulations the School District was not eligible in the Public Safety or Special Emergency Radio Services.

95. Clearly, Kay was not responsible for changing the authorization from a GP to a GB. This occurred before Kay's involvement, and this was information in the Commission's files that could have been easily determined by Hollingsworth. Had this been a matter of concern to Lewis, which he had raised in a complaint to the Commission accusing Kay of having improperly made this change, Hollingsworth's failure to ascertain the truth would be merely negligent. But Lewis did *not* initiate a complaint or raise a concern. In fact, he did not even know or understand anything about this matter, or have any concern about it, until coached by Hollingsworth to implicate Kay. Consider the following excerpts from Lewis's deposition testimony:

> Q. On page 2, paragraph 2 [of the Lewis Witness Statement] it indicates that you put it in the file without noticing that it had been changed from a GP, special emergency license, to a GB, conventional business license. Where did you get that particular piece of information?
>
> A. That was during the conversation with Mr. Hollingsworth.
>
> Q. Did he ever show you any documents to substantiate the fact that it had been a GP, as in Paul, license?
>
> A. Not to my recollection.

Exhibit RL-2, Transcript at 39-40. The deposition transcript also reveals that Lewis did not then, and does not now, even understand the change or its significance. *Id.* at 55-55. In fact, Lewis does not even know whether or not the School District ever had a GP license:

> Q. What we're seeking is any information you have as to whether or not the a GP license was ever held by the school district.
>
> A. I don't -- I don't know.

Q. Did you rely upon the information given to you by the FCC, then, in making this statement about the change from GP to the GB?

A. Yes.

Id. at 57.

96. Hollingsworth knew or could easily have determined that the conversion of the School District's license from a GP to a GB had nothing whatsoever to do with Kay, and in fact occurred before Kay even became involved with the School District. He nonetheless suborned from Lewis (a man who was not theretofore aware of the change and had no understanding of its significance) an under oath accusation that Kay had improperly engineered the change without his knowledge. So anxious to smear Kay is Hollingsworth that he has Lewis accusing Kay of (a) something Kay clearly did not do, and (b) something that, in any event, would have been entirely proper if Kay had done it, namely, correcting an improperly issued GP authorization to the proper GB category.

97. A similar pattern emerges regarding the suggestion that Kay acted improperly in converting the School District's license from a community repeater to an end user license. Consider the following:

Q. [reading from the Lewis Witness Statement]: "I did sign the application that switched us from a licensee to an end user, but I didn't realize the consequences of what I had signed." My question here is: What are the consequences you were concerned about at the time you made this statement?

A. What I -- with discussions with the FCC, what was brought to my attention was that the license that we originally had with them. We were a licensee originally and with the license, it was changed to sign over from Modjeska to Santiago. We became an end user at that time.

Q. Was there someone that told you that that was a bad thing that had happened?

A. I don't remember.

Q. Did someone come to you and indicate that you had been in some way snookered out of a license that was very important or valuable?

A. Yes, that was the discussion with the FCC.

Q. Can you recall who it was at the FCC that said that?

A. No, I cannot.

Q. Let me ask you this question. Are you sure it was a conversation that you had with someone at an FCC location?

A. Yes.

Q. How is that?

A. It was -- when I went up to -- met with them at Cerritos.

Id. at p. 50-51.

98. Once again we see that Lewis had no information, knowledge, or even belief of any wrongdoing by Kay, but was rather coached by Hollingsworth to implicate Kay. Hollingsworth was almost certainly the one who fed Lewis the information at the Cerritos meeting, and Hollingsworth later prepared the sworn statement for Lewis. But Hollingsworth knew full well that Kay's conduct was not only proper, it was in fact required by FCC regulation. The School District held a community repeater authorization for Modjeska Peak. Because Motorola, who operated the repeater, was unable or unwilling to resolve the service problems, the School District sought out another solution. Kay was willing to provide them with SMR service from nearby Santiago Peak. But this meant two things under then-applicable FCC regulations: (1) the School District would not be permitted to maintain its Modjeska Peak

authorization because it was discontinuing operations from that site, and (2) the School District would require an end user license in order to legally receive service via Kay's Santiago SMR. Kay therefore did the logical and entirely appropriate thing--he prepared an application to convert the School District's community repeater license to an end user authorization. Exhibit RL-6 is a copy of Kay's February 17, 1992 letter transmitting the completed application to Lewis for his review and signature. A copy of the competed FCC Form 574 as executed by Lewis is also included. It will be noted that Kay advised Lewis to "make a photocopy of the application and keep the copy for your records," Exhibit RL-6 at 1, something he surely would not have done had he been attempting to improperly convert the authorization in some way. The application form is clearly market "GB" at Item 20 (Radio Service), and it clearly states "CONVERT TO END USER" as one of the purposes of the application. *Id.* at 2.

99. Contrary to the impression given in the Hollingsworth-prepared written statement, Lewis does not believe he was wronged by Kay:

> Q. Do you ... believe that Mr. Kay did anything wrong, improprietous or unethical in his business dealings with you? ...
>
> A. No.

Exhibit RL-2, Transcript at 56-57. Nevertheless, Hollingsworth told Lewis that Kay had improperly converted the School District authorization from a GP to a GB and from a community repeater license to an end user authorization, information Hollingsworth knew to be patently false. Hollingsworth then prepared a written statement containing the inaccurate information and solicited Lewis's under-oath signature on the statement. Such reprehensible conduct by one who is ostensibly charged with protecting the public interest can not be tolerated.

V. CONCLUSION

100. Since 1994 Sobel has suffered the Bureau's mistreatment of him. No explanation was given for the freeze on processing Sobel's applications. Sobel's inquiries about this were ignored. The Bureau (and the Commission) then erroneously included Sobel's call signs in the Kay designation order. The Bureau corrected this order only when it suited the Bureau's own litigation strategy against Kay. The freeze on Sobel's pending matters continued, and the Bureau stubbornly ignored Sobel's continuous attempts to learn what concerns justified this inaction and to resolve them. Out of frustration, Sobel sought judicial relief from the Bureau's unlawful inaction. The Bureau's vindictive response to that was the adoption of license revocation proceedings in blatant violation of the Administrative Procedure Act. This was contrary to the Commission's long-standing practice of confronting errant licensees with a notice of violation and affording them an opportunity to explain and correct any deviation. When the inadequacy of the charges to support revocation were exposed, the Bureau feigned a sudden outrage at Sobel's alleged lack of candor in a then more than two-year old document.

101. In the midst of all this, Sobel's competitors are given special treatment by the Bureau. Their applications are processed and granted when they should not be. Their canceled authorizations are unlawfully reinstated. Conclusively proven wrongdoing by them is utterly ignored. In short, a discriminatory double standard is applied whereby Sobel always comes out on the short end of the stick.

102. This was at one time all very perplexing and Sobel was at a loss to explain it. But now it is all very clear. This is not a matter of mere regulatory lethargy, nor is it mere coincidence or even incompetence. It is by design born of bad faith and ill will. What is now clear to Sobel is the motive for his mistreatment at the hands of the Bureau. It is really quite

simple, Sobel has been singled out for harassment, harsh treatment, and blatant discrimination by the Bureau for no other reason than his friendship and business association with Kay. There is more than ample reason to suspect the bona fides of the Bureau's case against Kay, especially given the numerous examples of unlawful conduct by the Bureau in its pursuit of that cause. But even if there were cause for the Bureau's actions against Kay, that does not and should not have anything to do with Sobel. The Commission should not and "do[es] not practice guilt by association in [its] review functions." *Lowery Communications, L.P.*, 71 FCC Rcd 7139, ¶ 47 (1992).

WHEREFORE, it is respectfully requested that the Commission to conduct an investigation or, pursuant to Section 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 403, into the facts and circumstances surrounding the designation and prosecution of the captioned proceeding; that Sobel be made a party to the investigation and afforded full discovery rights; and that, upon conclusion of the investigation, the Commission make findings and fashion appropriate relief.

Respectfully submitted this 2nd day of March, 1998,

MARC D. SOBEL d/b/a AIR WAVE COMMUNICATIONS

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Fax: 301-229-6875
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EXHIBIT CK-1

OCT 23 '97

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

In the matter of	]	
	]	
NEXTEL COMMUNICATIONS, SMART SMR OF CALIFORNIA, INC., D/B/A	]	FCC File No. 9301618165
	]	
Conventional SMR (GX) Station WPCM497 851.2375 and 854.1625 MHz at Mount Adalaide near Bakersfield (Kern) CA	]	
	]	
CARRIER COMMUNICATIONS	]	FCC File No. 9301618165
	]	
Conventional SMR (GX) Station WPCM497 851.2375 and 854.1625 MHz at Mount Adalaide near Bakersfield (Kern) CA	]	
	]	
DEBORAH KILLIAN	]	FCC File No. 9301617966
	]	
Conventional SMR (GX) Station WPCE285 851.6125 MHz at Mount Adalaide near Bakersfield (Kern) CA	]	
	]	
CHRIS KILLIAN, DEBORAH KILLIAN, CARRIER COMMUNICATIONS, AND/OR CARRIER COMMUNICATIONS AND ELECTRONICS	]	
	]	
Licensee of and/or Applicant for various facilities pursuant to Part 90 of the FCC Rules and Regulations, 47 C.F.R. § 90.1 *et seq.*	]	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR INSTITUTION OF LICENSE REVOCATION PROCEEDINGS

James A. Kay, Jr., by his attorney, hereby respectfully requests the institution of license revocation proceedings, in support whereof, the following is respectfully shown:

A. KAY HAS STANDING TO CHALLENGE THE CAPTIONED AUTHORIZATIONS.

1. Kay herein seeks the commencement of license revocation proceedings pursuant to Section 312(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 321(a). As a direct commercial competitor with both Chris Killian d/b/a Carrier Communications ("Killian") and Smart SMR of California, Inc. d/b/a Nextel Communications ("Nextel") in the Los Angeles, California, land mobile radio communications industry, Kay is a party in interest with standing to intervene in licensing matters affecting those companies on the grounds of economic

injury. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). To the extent the Commission determines that Section 312(a) does not confer private rights to seek such actions, Kay asks that this filing be deemed an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules and Regulations. 47 C.F.R. § 1.41. In any event, the matters presented herein raise substantial and very serious public interest questions that must be addressed by the Commission, in the discharge of its statutory duties, regardless of Kay's formal procedural rights, or lack thereof. *Cf. Clarksburg Publishing Co. v. FCC*, 225 F.2d 511 (D.C. Cir. 1955).[1]

B. KILLIAN INITIALLY OBTAINED THE CAPTIONED LICENSES BY FRAUD AND MISREPRESENTATON.

2. A review of Commission records will show that Chris Killian, in 1993, made application in the name of Carrier Communications, requesting authorization for the frequencies 851.2375 and 854.1625 MHz at Mount Adalaide, near Bakersfield (Kern County) California. It appears that the application was originally filed in late 1992 or January of 1993, was returned by the Commission, and then resubmitted by Chris Killian in June of 1993, whereupon it was processed and granted by the Commission, resulting in the issuance to Carrier Communications the authorization bearing call sign WPCM497, a reference copy of which is appended hereto as Attachment No. 1. We shall hereafter refer to this application as the "Carrier Communications Application" and to the resulting authorization as the "Carrier Communications License."

3. A further review of the Commission's records will show that on or about the same date that the above-described Carrier Communications application was originally filed, another application was filed in the name of Deborah Killian. This application requested

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[1] In *Clarksburg Publishing* the Court stated:

> the Commission's inquiry [must] extend beyond matters alleged in the protest in order to reach any issue which may be relevant in determining the legality of the challenged grant. Clearly, then, the inquiry cannot be limited to the facts alleged in the protest where the Commission has reason to believe, either from the protest or its own files, that a full evidentiary hearing may develop other relevant information not in the possession of the protestant.

225 F.2d at 515. A logical extension of this principal is that the Commission therefore may not avoid addressing a serious challenge to a licensee's qualifications because of lack of standing on the part of a whistle blower.

authorization for the frequency 851.6125 MHz, also at Mount Adalaide, near Bakersfield (Kern County) California. The Commission processed and granted this application, resulting in the issuance to Deborah Killian the authorization bearing call sign WPCE285, a reference copy of which is appended hereto as Attachment No. 2. We shall hereafter refer to this application as the "Deborah Killian Application" and to the resulting authorization as the " Deborah Killian License."

4. The business address for Carrier Communications is 42326 Tenth Street West, Lancaster, California, 93534, and this is the address that was used in the Carrier Communications Application. The address used in the Deborah Killian Application was 44349 Lowtree, Suite 163, Lancaster, California 93534. Upon information and belief, this address was at the time merely a mail drop. Deborah Killian is the spouse of Chris Killian. This relationship is not disclosed anywhere in either the Deborah Killian Application or in the Carrier Communications Application.

5. Upon information and belief, Carrier Communications was not, at the time of these applications, a corporation or a partnership, but rather a sole proprietorship owned by Chris Killian and/or an unincorporated business owned jointly by Chris and Deborah Killian. Nevertheless, the proper procedure was not followed in filling out the FCC Form 574 used for the Carrier Communications application, in that the applicant name was given as "Carrier Communications" rather than as "Chris Killian, DBA Carrier Communications." *See FCC Form 574 Instructions*, Item 21, page 22 (August 1989).

6. Deborah Killian recently testified, under oath, at a deposition in which she was questioned regarding the Deborah Killian License. A copy of the transcript is appended hereto as Attachment No. 3. The pertinent parts of here testimony are as follows:

Q: Do you hold any FCC licenses?
A: I believe I hold one.
Q: What do you use that one for?
A: I don't know, I just have my name on the license.
Q: Is that something you did for your husband's business?
A: Yes.

Killian Deposition Transcript at p. 11.

Q: So far as you know, the only place your name appears with regard to Carrier Communications is on the one FCC license?
A: That's correct.
Q: Carrier Communications uses that license in the business, is that correct?
A: I don't know.

Killian Deposition Transcript at p. 21

Q: So you have never read ... any of the FCC rules, you don't keep around the FCC rule book or anything like that?
A: No, I don't.

Killian Deposition Transcript at p. 23

Q: Let's see now. The radio station that we have discussed earlier that is in your name, do you know if anybody manages that particular station?
A: I know nothing about that.
Q: You don't know who it is that manages it; correct?
A: That's correct.
Q: You don't know whether or not it is pursuant to a written contract or oral contract; is that correct?
A: That's correct.
Q: You don't even know where the contract is, correct?
A: That's correct.
Q: You don't even know whether or not a contract at all exists; is that correct?
A: That's correct.
Q: Who would know these things?
A: I would imagine my husband, Chris.
Q: If somebody was in possession of any contracts about that particular station and knew where the documents would be, it would be Chris?
A: Chris.
Q: I would imagine from what you know that with regard to that particular station, you don't know whether it has been constructed, when it has been operated, or any of the details of it?
A: I know no details about it, no.
Q: You don't know whether it has been constructed?
A: I don't know.
Q: You don't know whether or not it is operating; is that correct?
A: That's correct.

Killian Deposition Transcript at pp. 26-27.

7. It is clear from the foregoing that Chris Killian has intentionally misrepresented material facts to the Commission, intentionally concealed material facts from the Commission, and otherwise lacked candor with the Commission. He obtained the Carrier Communications License by means of this fraudulent conduct. Upon information and belief, Chris Killian d/b/a Carrier Communications would not have been eligible for the two channels requested at Mount

Adelaide in the Carrier Communications Application if it had, at the same time, held an authorization for or been an applicant for the third channel requested at Mount Adelaide in the Deborah Killian Application. Accordingly, Chris Killian had the Deborah Killian Application prepared in his wife's name and used an address other than his normal business mailing address. He departed from accepted procedures in giving the applicant name in the Carrier Communications Application so as to make it less likely that the two applications would be connected. Finally, he failed to disclose that he was the real party in interest in the Deborah Killian Application.

8. As a result of this fraud on the Commission Chris Killian obtained the Carrier Communications License, a valuable asset which he subsequently sold to Nextel Communications for a substantial sum of money. Appended hereto as Attachment No. 4 is a copy of the application (FCC Form 490) for Commission consent to the assignment of the Carrier Communications License from "Carrier Communications and Electronics" to Smart SMR of California, a wholly-owned subsidiary of Nextel Communications, Inc. Appended hereto as Attachment No. 5 is a reference copy of the resulting authorization. While Kay does not know the price paid by Nextel, based on his knowledge of the industry, he estimates that Chris and/or Deborah Killian received, or have contracted to receive, between $50,000 and $100,000 for the Carrier Communications License, and quite possibly more. Insofar as the authorization was obtained by means of misrepresentation and lack of candor, the Commission should act immediately to require the disgourgement of this unjust enrichment.

C. The Assignment of the License for Station WPCM497 to Nextel is Null and Void.

9. In addition to the fact that Chris Killian fraudulently obtained the Carrier Communications License and should not be permitted to profit from such unlawful conduct, the assignment of the authorization to Nextel is void for yet another reason. Appended hereto as Attachment No. 6 are the papers in connection with a finder's preference request filed by Applied Technology Group, Inc. in which Station WPCM487 was the target. Although the request was subsequently dismissed on procedural grounds, it nonetheless presented substantial prima facie evidence that the authorized facilities were never constructed. At the relevant time, Section

90.155(a) of the Commission's Rules required that Station WPCM487 be constructed and "placed in operation within eight (8) months from the date of license grant." 47 C.F.R. § 90.155(a).[2] Upon the licensee's failure to meet the deadline, "the authorization cancels automatically and must be returned to the Commission." *Id.* Accordingly, the Carrier Communications License automatically cancelled by operation of law, and Chris Killian therefore had nothing to assign to Nextel. On this basis alone the Commission should rescind the license.

10. The assignment application constitutes a further instance of misrepresentation and lack of candor. Chris Killian certainly knew that the facilities he was attempting to assign to Nextel had not been timely constructed. Nextel, who presumably did a thorough due diligence review before contracting to acquire the application and submitting an FCC application therefor, knew or should have known the same thing. Nonetheless, both parties proceeded with the assignment of license application without disclosing this highly material fact to the Commission.

11. It appears from a review of the Commission's files that the application did not contain the usual certifications of timely construction typically required by the Commission. If such certifications were included (and are simply absent from the publicly available copy of the application), they are, of course, direct and affirmative misrepresentations. Even in the absence of such certifications, however, the mere filing of the application without disclosing the nonconstruction is a constructive representation that timely construction occurred and that the subject authorization is valid. At a minimum such conduct constitutes lack of candor. Nonetheless, both Chris Killian and Nextel executed the application thereby certifying under penalty of perjury that all statements in the application were true.

D. Conclusion and Prayer for Relief

12. Chris Killian has engaged in behavior that calls into serious question his qualifications to remain a Commission licensee. The Commission therefore should immediately (a) rescind any grants made to Chris Killian or any affiliate within the past 30 days, (b) suspend processing on any pending applications by Chris Killian or any affiliate, and (c) designate all

[2] There have been some amendments to Section 90.155 since, but the essential requirements set forth in the subsections (a) and (c) of the rule were the same then as they are now (with the significant exception being the increase of the construction period from 8 to 12 months).

applications by and authorizations issued to Chris Killian or any affiliate for license revocation proceedings pursuant to Section 312(a) of the Communications Act. In addition, the Commission should consider whether appropriate forfeitures should be levied against Chris Killian for his conduct in violation of the Communications Act, Commission regulations, and Commission policy.

13. With regard to Call Sign WPCM497, it is respectfully submitted that the Commission need not await the conclusion of formal revocation proceedings. It is clear that both the original application by Chris Killian as well as the subsequent assignment application to Nextel were fraudulent. Even apart from the fraud, the assignment to Nextel is void *ab initio* for the further reason that the subject authorization had long before automatically cancelled by operation of law. Accordingly, with respect to WPCM497, the Commission should immediately: (a) declare that the authorization automatically cancelled for failure to timely construct; (b) rescind its consent to the assignment of the authorization to Nextel; and (b) require Chris and/or Deborah Killian to disgorge any monies or other consideration received from the sale of the station to Nextel.

14. The Commission should also investigate the role of Nextel Communications, Inc. in this matter. At a minimum, it appears that Nextel knew or should have known that the authorizations it was obtaining from Chris Killian had not been timely constructed. The Commission should therefore investigate the extent of Nextel's knowledge, the adequacy of its due diligence procedures, and the possibility that Nextel (who has for the past few years been in an extensive acquisition mode) may be party to many more such fraudulent assignments. Based on the results of such investigation, the Commission should take appropriate enforcement actions against Nextel.

WHEREFORE, good cause having been shown herein, it is respectfully requested that the relief prayed for in Section D, above, be granted forthwith.

Respectfully submitted,

James A. Kay, Jr.

By: Robert J. Keller
His Attorney

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Dated: 22 October 1997

DECLARATION OF JAMES A. KAY, JR.

I, James A. Kay, Jr., hereby state that I assisted in the preparation of the pleading entitled *PETITION FOR INSTITUTION OF LICENSE REVOCATION PROCEEDINGS*; that I reviewed a final draft of the pleading; and that all factual statements and assertions contained therein are true to the best of my personal knowledge, save and except matters specifically stated to be made on information and belief and matters of which the Commission may take official notice.

I declare, certify, verify, and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22nd day of October 1997.

James A. Kay, Jr.

ATTACHMENT NO. 1

REFFRENCE COPY THIS IS NOT A LICENSE

Federal Communications Commission
Gettysburg, PA 17325-7245

RADIO STATION LICENSE

Licensee Name: CARRIER COMMUNICATIONS

Radio Service: GX CONVENTIONAL SMR — License Issue Date: 930809

Call Sign: WPCM497 — File Number: 9301618165 — License Expiration Date: 980809

Frequency Advisory No: 923080043

Number of Mobiles by Category: Vehicular - **71** Portable -******Aircraft - ******Marine - ******Pagers*******

930809N 692 1 1Z

CARRIER COMMUNICATIONS
LICENSING SECTION
42326 10TH ST W
LANCASTER CA 93534

Station Technical Specifications

FCC I.D.	Frequencies (MHz)	Station Class	No. of Units	Emission Designator	Output Power (Watts)	E.R.P. (Watts)	Ground Eleva	Ant. Hgt. To Tip	Antenna Latitude	Antenna Longitude
1:	851.23750	FB2C	1	20K0F3E	60.000	156.000	3525	120	35-26-20	118-44-23
							HAAT	1238		
	854.16250	FB2C	1	20K0F3E	60.000	156.000				
	806.00000-821.00000	MO	71	20K0F3E	35.000	35.000				

	TRANSMITTER STREET ADDRESS	CITY	COUNTY	STATE
1:	MOUNT ADALAIDE	BAKERSFIELD	KERN	CA

AREA OF OPERATION
SITE 1: 70 MIRA 35-26-20N 118-44-23W BAKERSFIELD KERN CA

CONTROL POINTS:42326 10TH ST W LANCASTER CA:ASSOCIATED CONTROLS AND MOBILES OPERATING UNDER THIS AUTHORIZATION AND LICENSED TO USERS OF THIS SMR FACILITY
CONTROL POINT PHONE: 805-945-5448
STATION CLASS SUFFIX C = INTERCONNECT
STATION CLASS SUFFIX J = TEMPORARY WITH INTERCONNECT
STATION CLASS SUFFIX K = STAND-BY WITH INTERCONNECT
STATION CLASS SUFFIX L = ITINERANT WITH INTERCONNECT

EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S) SET OUT IN PART 2 OF THE COMMISSION'S RULES.

FEDERAL COMMUNICATIONS COMMISSION

This authorization becomes invalid and must be returned to the Commission if the stations are not placed in operation within eight months, unless an extension of time has been granted. EXCEPTION: 800 MHz trunked and certain 900 MHz station licenses cancel automatically if not constructed within one year.

FCC
September

REFERENCE COPY THIS IS NOT A LICENSE

Federal Communications Commission
Gettysburg, PA 17325-7245

RADIO STATION LICENSE

Licensee Name: KILLIAN, DEBORAH

Radio Service: GX CONVENTIONAL SMR — License Issue Date: 930512
Call Sign: WPCE285 — File Number: 9301617966 — License Expiration Date: 980512
Frequency Advisory No: 923630001
Number of Mobiles by Category: Vehicular - **35** Portable -**37**Aircraft - ******Marine - ******Pagers*******

930512N 285 1 1Z

KILLIAN, DEBORAH
44349 LOWTREE STE 163
LANCASTER CA 93534

Station Technical Specifications

FCC I.D.	Frequencies (MHz)	Station Class	No. of Units	Emission Designator	Output Power (Watts)	E.R.P. (Watts)	Ground Eleva	Ant. Hgt. To Tip	Antenna Latitude	Antenna Longitude
1:	851.61250	FB2C	1	20K0F3E	75.000	160.000	3525	20	35-26-20	118-44-23
							HAAT	1238		
	806.00000-MO 821.00000		72	20K0F3E	35.000	70.000				

	TRANSMITTER STREET ADDRESS	CITY	COUNTY	STATE
1:	MOUNT ADALAIDE	BAKERSFIELD	KERN	CA

AREA OF OPERATION
SITE 1: 70 MIRA 35-26-20N 118-44-23W BAKERSFIELD KERN CA

PAINTING AND LIGHTING SPECIFICATIONS
SITE 1: SEE ATTACHED FORM 715/715A PARAGRAPHS: 1 3 11 21

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Septe

ATTACHMENT NO. 3

In The Matter Of:

James A. Kay, Jr. v.
Harold Pick

Deborah Killian
September 17, 1996

Coleman, Haas, Martin & Schwab, Inc.
6222 Wilshire Boulevard
Suite 204
Los Angeles, CA 90048
(213) 480-1234 FAX: (213) 480-0381

Original File 962553, 36 Pages

Word Index included with this Min-U-Script®

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
JAMES A. KAY, JR.,)
Plaintiff,)
vs.)
) No. LC 023366
HAROLD PICK, GERARD PICK,)
ET AL.,)
Defendants.)
DEPOSITION OF DEBORAH KILLIAN
Los Angeles, California
September 17, 1996
WYNNE FORREST
CSR #3809
JOB NO. 962563

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
JAMES A. KAY, JR.,)
Plaintiff,)
vs.)
) No. LC 023366
HAROLD PICK, GERARD PICK,)
ET AL.,)
Defendants.)
Deposition of DEBORAH KILLIAN,
taken on behalf of Plaintiff at
424 South Beverly Drive, Beverly Hills,
California, commencing at 12:17 p.m.,
Tuesday, September 17, 1996, before
Wynne Forrest, CSR #3809, pursuant
to Notice

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APPEARANCES:
FOR PLAINTIFF:
DRAWFORD & CRAWFORD
BY: WILLIAM ARTHUR CRAWFORD, ESQ.
424 South Beverly Drive
Beverly Hills, California 90212
ALSO PRESENT: JAMES KAY

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WITNESS:
DEBORAH KILLIAN
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Examination by Mr. Crawford 5
UNANSWERED QUESTIONS:
(None)
INFORMATION TO BE INSERTED:
(None)
EXHIBITS:

Plaintiff's	Description	Identified
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[1] **DEBORAH KILLIAN,**

[2] having been first duly sworn, was [3] examined and testified as follows.

[5] **EXAMINATION**

[6] **BY MR. CRAWFORD:**

[7] **Q:** Will you please state your name and spell [8] it for the record.

[9] **A:** Deborah Killian, D-e-b-o-r-a-h L-y-n-n [10] K-i-l-l-i-a-n.

[11] **Q:** Deborah, I am William Crawford. I [12] represent James Kay in this matter. You are here [13] pursuant to a subpoena; is that correct?

[14] **A:** Uh-huh.

[15] **Q:** I have a copy of the subpoena which we [16] are going to attach to your deposition transcript as [17] Exhibit 1, a common procedure.

[18] Have you ever had your deposition taken [19] before?

[20] **A:** No.

[21] **Q:** First time?

[22] **A:** Yes.

[23] (Plaintiff's Exhibit 1 was marked [24] for identification by the reporter [25] and is attached hereto.)

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[1] **BY MR. CRAWFORD:**

[2] **Q:** Let me tell you a little bit about it, [3] then. A deposition is a statement made under oath. [4] It bears with it the same force and effect, is under [5] penalty of perjury and stuff like that, as though you [6] are testifying in a courtroom before a judge and a [7] jury. You have the same obligation to tell the [8] truth.

[9] The court reporter you see here to my [10] right is taking down everything that is said in the [11] room since you were sworn and will continue to do so [12] unless we go off the record. Okay? If you just say, [13] "Well, off the record, it is this or that," it will be [14] on the record, okay?

[15] If I say, "Why don't we go off the [16] record" and we agree, then she will stop, okay?

[17] **A:** Okay.

[18] **Q:** She is taking down everything that is [19] said and later on it will be transcribed into a [20] booklet form. It reads like a play, page numbers, [21] line numbers and question and answer, question and [22] answer. At some point in time you will get an [23] opportunity to read that deposition transcript, make [24] any changes to your answers that you deem appropriate, [25] and sign it under penalty of perjury. If you make any

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[1] changes to your answers or have an opportunity to [2] review it and don't make any changes to your answers [3] and later testify differently, it could have an [4] adverse effect upon your credibility.

[5] Do you understand?

[6] **A:** Uh-huh.

[7] **Q:** With regard to "uh-huh" and "uh-uh" —

[8] **A:** Sorry.

[9] **Q:** Since I just got one, everybody does it. [10] We are used to guttural responses. I know that sounds [11] horrible, but we use them a lot in our day-to-day [12] speech. In a deposition we need to have a clear [13] record, which means we try to not use them because if [14] you do use them, I will say, "Is that a 'yes' or a [15] 'no'?" Okay? Don't be embarrassed if I do, however, [16] because virtually everyone, including lawyers, makes [17] that mistake at some point in time or another.

[18] Further to my point about a clear record, [19] at some point in time you may be asked for an estimate [20] of time, space, distance, speed, so forth and so on. [21] I am entitled to your best estimate. But I don't want [22] you to guess, okay? The difference between an [23] estimate and a guess is usually pretty clear, but I [24] will give you an example.

[25] You could estimate the length of this

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[1] table, although you would not be able to estimate the [2] length of the table in my living room because you have [3] never been there and you would not know whether I have [4] a table in my living room or not, okay?

[5] **A:** Okay.

[6] **Q:** That would be guessing. [7] But another aspect, I guess, that we [8] should cover here is that the object of a deposition [9] is to have a clear record. So if I ask you a [10] question, I will assume that you understood the [11] question if you give me an answer. If for any reason [12] you don't understand a question, please ask me to [13] clarify it. I will be glad to. Okay?

[14] **A:** Okay.

[15] **Q:** You are entitled to be comfortable during [16] the deposition. We have the air conditioning on. If [17] you need to take a break for any reason, just ask, [18] okay? It is not the Spanish Inquisition, just a walk [19] in the park.

[20] Wait until I complete my question before [21] you answer because that way we don't have two people [22] talking at the same time because it is difficult for [23] the court reporter to take it down if we have two [24] people talking at the same time. Okay?

[25] **A:** Okay.

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[1] **Q:** Back to the identification. You stated [2] your name. Could you also please tell me where you [3] reside?

[4] **A:** I reside at 11452 Acacia Street, [5] Lancaster, California 93535.

[6] **Q:** Do you have any plans on moving in the [7] near future?

[8] **A:** Not at the moment.

[9] **Q:** I meant near future, within the next few [10] months.

[11] **A:** Uh-uh.

[12] **Q:** We like to keep track of witnesses. [13] That's why I am asking you that question because if [14] you were thinking about moving to Paris next month, I [15] might do some things differently in this deposition.

[16] At any rate, are you currently employed?

[17] **A:** No.

[18] **Q:** Working as a housewife?

(19) A: Yes.

(20) Q: Mother of children?

(21) A: Yes.

(22) Q: Probably keeps you busy. When was the (23) last time that you were employed?

(24) A: July of 1989.

(25) Q: What company was it you were working for

(1) at that time?

(2) A: Carrier Communications.

(3) Q: What was your position at Carrier?

(4) A: Assistant manager.

(5) Q: What is highest level of formal education (6) that you have had?

(7) A: I am in my junior year of college, (8) majoring in economics.

(9) Q: I, too, was an econ. major -- double (10) major, econ. and econ. studies. Good major.

(11) What were your duties as assistant (12) manager in 1989 at Carrier Communications?

(13) A: I guess you would say more an office (14) assistant rather than a manager. I took care of (15) employees duties, making sure they got to locations (16) they needed to get to, did some accounting, typed up (17) letters, all sorts of things.

(18) Q: General office work from the sound of (19) things?

(20) A: Jack of all trades.

(21) Q: Carrier Communications is a two-way radio (22) business, am I right?

(23) A: Yes.

(24) Q: Have you had any formal training in radio (25) at all?

(1) A: No.

(2) Q: Are you currently involved with Carrier (3) Communications?

(4) A: No.

(5) Q: Husband works for them, right?

(6) A: That's correct.

(7) Q: Or maybe he owns it?

(8) A: He owns it.

(9) Q: Are you in any position there like the (10) board of directors or hold any position at the company (11) even if it is nominal?

(12) A: I hold no position.

(13) Q: Do you hold any FCC licenses?

(14) A: I believe I hold one.

(15) Q: What do you use that one for?

(16) A: I don't know. I just have my name on the (17) license.

(18) Q: Is that something you did for your (19) husband's business?

(20) A: Yes.

(21) Q: How long have you been married?

(22) A: Ten years.

(23) Q: Congratulations. That's a good record (24) there. I would like to turn right now to the (25) deposition subpoena itself.

(1) Do you have a copy there?

(2) A: Yes.

(3) Q: Okay. Attached to it is Attachment 3. (4) Now Attachment 3 requests certain books, papers, (5) records, documents, so forth and so on. Why don't we (6) go through the categories of these particular document (7) requests and I am going to ask you a few questions, (8) including whether or not you brought any such (9) documents with you today, whether or not you know the (10) existence of any such documents, and if you do, where (11) they are.

(12) Why don't we start with No. 1. Have you (13) brought any of those documents with you today?

(14) A: No.

(15) Q: Do you know of the existence —

(16) A: No, I do not.

(17) Q: Do me a favor and let me finish my (18) question here.

(19) A: You paused.

(20) Q: I did. You are right. Do you know of (21) the existence of any of the documents requested in (22) No. 1?

(23) A: No.

(24) Q: Why don't I just do this as a preliminary (25) to all these. Have you had an adequate opportunity to

(1) review Attachment No. 3 in its entirety?

(2) A: I have perused it. I did not know any of (3) the names of these people so I would not have any (4) records. I mean, I don't know these people. I don't (5) have any records of communication for these people.

(6) Q: All right. So do you think you have — (7) Do you think you have read this in sufficient detail (8) to understand what each of these items is requesting?

(9) A: Yes.

(10) Q: I don't want to go through all of those (11) documents and find out that you did not understand it.

(12) A: Okay.

(13) Q: If you have any questions on any of (14) these, Nos. 1 through 17, feel free to ask me now and (15) I will clarify because sometimes one might help out (16) the other. We will take care of that as kind of a (17) batch, if we can.

(18) A: I don't have access to any of these (19) records.

(20) Q: We will still go through them in a little (21) bit of detail here. Before we do that, I want to ask (22) you one other question. Sometimes people are not (23) feeling as though they can give their best testimony (24) in a deposition for reasons of recent personal trauma, (25) a death in the family, had a car accident on the way

(1) here, use of drugs or alcohol that still affects them (2) or they are ill for some reason.

(3) Do you feel that you are capable of (4) giving your best testimony as you sit here today?

(5) A: Yes.

(6) Q: Good. The reason you don't have any of (7) those documents is because you don't know who Harold (8) Pick is; is that correct?

(9) A: I have heard of him, but I do not know (10) him.

(11) Q: You have not had any written documents (12) sent to you from Harold Pick, then?

(13) A: No, I have not.

(14) Q: Do me a favor. Let me finish. Sometimes (15) I talk a little bit slow.

(16) So essentially you have not received (17) anything from Harold Pick is what it boils down to in (18) terms of correspondence, letters, cards?

(19) A: I have never received anything from (20) Harold Pick.

(21) Q: No. 3 requests similar things from (22) Annedore Pick. Have you ever received anything from (23) Annedore Pick?

(24) A: No.

(25) Q: No. 4, once again, the same thing with

(1) anything you have received from Annedore Pick?

(2) A: No.

(3) Q: Do you know who Annedore Pick is?

(4) A: No.

(5) Q: No. 5, essentially any telephone messages (6) that you have got, any kind of other notes or (7) memoranda from Gerard Pick?

(8) A: No.

(9) Q: Is that because you do not know who (10) Gerard Pick is?

(11) A: I do not know Gerard Pick.

(12) Q: You do not know who Gerard Pick is; is (13) that correct?

(14) A: That is correct.