

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
LIBERTY PAVING COMPANY, INC.)
)
Licensee of Conventional Business Radio)
Service Station WRG921 "Operating" on the)
Frequency Pair 808/853.5875 MHz at)
Corona/Santiago Peak (Riverside) California)

WT Docket No. 98-_____

To: Chief, Enforcement and Consumer Information Division
Wireless Telecommunications Bureau

REQUEST FOR INITIATION OF LICENSE REVOCATION PROCEEDINGS

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 1.41 of the Commission's Rules and Regulations, 47 C.F.R. § 1.41, and the First Amendment of the Constitution of the United States,¹ hereby respectfully petitions the Commission to initiate license revocation proceedings against Liberty Paving Company, Inc. ("Liberty") and its principal, Mr. Charles F. Barnett ("Barnett"), in support whereof, the following is respectfully shown:

1. Attachment No. 1 hereto is a copy of an excerpt from the transcript of a the deposition of Barnett in a civil matter, *Lucky's Two-Way Radios v. Liberty Paving Co.* (Case No. BC 142387; Superior Court of California for the County of Los Angeles). Barnett admits therein, under oath, that the radios his company had been using pursuant to the above-captioned license were taken out of service in the fall of 1994. In August of 1994 Liberty contracted for service on Nextel's new 800 MHz digital system. Liberty traded the old radios in for a credit of \$100 each. The old radios were taken away by the technicians who installed the new Nextel radios in Liberty's vehicles. Mr. Barnett further testified that his company has not used the old

¹ The First Amendment guarantees, among other liberties, "the right of the people ... to petition the government for a redress of grievances." U.S. CONST. amend. I.

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radios or any radio system other than Nextel's since that time. Mr. Barnett's service with Nextel began sometime in August-September of 1994. Thus, Liberty has not operated pursuant to the captioned license for nearly four years.

2. Section 90.157 of the Commission's Rules and Regulations provides, in pertinent part:

The license for a station shall cancel automatically upon permanent discontinuance of operations and the licensee shall forward the station license to the Commission. . . . For the purposes of this section, any station which has not operated for 1 year or more is considered to have been permanently discontinued.

47 C.F.R. § 90.157(a-b). In at least one case the Commission has held that a license had automatically canceled when a station was off the air for more than a year after its tower burned down. *Procell Communications, Inc.*, 11 FCC Rcd 5806, 5808 (1996). The above-captioned station has been off the air for more than three and a half years, and the discontinuance of operation was a voluntary action on Liberty's part.

3. Notwithstanding the foregoing, Liberty has to date not, to Kay's knowledge, forwarded the license for cancellation as required by the rules. Rather, he is holding on the authorization, most likely in an attempt to profit on it by assigning it to another party or later canceling it for the benefit of another party in exchange for monetary consideration. This is improper conduct unbecoming of a licensee.

4. Attachment No. 2 hereto is a copy of an excerpt from the transcript of a recent deposition of Barnett in connection with WT Docket No. 94-147. Barnett admits that he lied when he wrote to the Bureau telling them he had a tape recording in which Kay allegedly incriminated himself. Barnett further admits that he made the false statement for the express purpose of possibly influencing the Commission to reinstate one of his canceled licenses.

5. Specifically, Mr. Barnett testified as follows:

Q. Did you write this letter?

A. [by Mr. Barnett] Yes, I did.

Q. Did you type this letter?

A. Yes, I did.

Q. The signature at the bottom, is that your signature?

A. Yes, it is.

Q. I would like to refer you to a sentence approximately seven lines down from the top of the first paragraph. I'll read a portion of the sentence. "I have in my possession a taped phone conversation between Mr. Kay and myself when I first was made aware that my current carrier 'Fleetcall' had not assigned my radio service to Mr. Kay's company." You drafted that sentence, correct?

A. Yes, I did.

Q. Do you have possession of a taped phone conversation between Mr. Kay and yourself?

A. No, I don't.

Q. Have you ever taped a phone conversation between yourself and Mr. Kay?

A. No, I haven't.

Q. Then it's not unfair for me to state that this statement is untrue?

A. The statement is untrue.

Q. Why did you make that statement knowing that it was untrue?

A. Well, prior to writing this letter I had received a letter from the FCC telling me that I was going to have my license reinstated. After I received the letter I received a copy of the petition that this Mr. Kay's attorney sent to Washington or Gettysburg still fighting the issue, and I thought that if I was still in the balance whether I was going to get my license back or not and if a tape recording could make a difference that would be absolutely pivotal, I was willing to try to get a tape recording from Mr. Kay that he would repeat some of the things he had told me already on the phone.

Transcript at pp. 9-11.

6. A substantial and material question of fact is presented as to whether Liberty and Barnett possess the requisite character qualifications to be Commission licensees. Not only does Barnett refuse to comply with Commission's Rules when to do so might deprive him of a personal business opportunity, he even unabashedly lies to Commission personnel. Intentionally making false statements to the Commission is, in itself, bad enough; but Barnett admits that he lied for the express statement of influencing Commission action on a matter in which he had a direct personal interest. This conduct calls into serious question the character qualifications of Barnett and Liberty. It is therefore incumbent upon the Commission immediately to institute license revocation proceedings.

7. The Commission should at once issue and order to show cause why the above-captioned license and any other licenses held by Liberty or Barnett should not be revoked. The Commission should similarly designate for hearing on the same question any pending or future applications by Liberty or Barnett. Kay respectfully asks that he be made a party to these proceedings.

Respectfully submitted this 20th day of May, 1998

JAMES A. KAY, JR.

By: 

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1 Q And you didn't send it to Mr. Kay's
2 attorneys either; is that correct?

3 A No.

4 Q That came out backwards, I think. Did
5 you send it to Mr. Kay's attorneys?

6 A No.

7 MR. CRAWFORD: We will attach that as next in
8 order, Exhibit No. 15.

9 I have here another packet of documents.
10 I am starting with Colonial Pacific Leasing letterhead
11 dated August 29, 1994.

12 Q I will ask you to review this and tell me
13 whether or not you recognize these documents. It is
14 my understanding that these documents are the total of
15 the documents that were involved in you getting rid of
16 your old radios and then changing over to Nextel
17 Service.

18 I will ask you if that is true, to your
19 knowledge?

20 A These documents show a record of my old
21 radios back in 1979 and getting involved in the new
22 radios, Colonial Pacific being the leasing company
23 doing the financing.

24 Q Can you recall when it was that the old
25 radios were taken out of service? When I say "the old

1 radios" I am talking about the radios that you used
2 prior to your Nextel service in your business of
3 Liberty Paving?

4 A Not exactly, no. It would probably
5 correlate with those records that you have there,
6 pretty closely, on when we fired up the new system and
7 tore down the old system.

8 Q Would it be safe to say that the new
9 Nextel units were placed into service sometime in
10 August of 1994?

11 A If August is an important pivotal date,
12 then, I would have to look into my records and tell
13 you an exact date to see when we started things up.

14 Q If you could, look at your records; I
15 would appreciate that to get the exact date.

16 A The records that I need to show that, you
17 have them, I don't. You would have to go back to when
18 you wanted all of my invoices. You can see when my
19 first payment was paid to Nextel. Nextel are those
20 the people that I pay my bill to?

21 Q I believe I have a bill here from Nextel
22 for service. I will hand this packet of documents
23 back to you and on Page 4 I think there is a Nextel
24 Service Agreement.

25 Is there anything on here that you can

1 see that indicates what the service start date was?

2 A Well, we have an installation date here
3 of August 13, it appears at 9:00 in the morning for
4 installation of new radios. It would have to be after
5 that that it worked.

6 Q Do you think they worked within a month
7 after that?

8 A Yes.

9 Q So you think it would be safe for us to
10 say that for sure you were operational on your new
11 radios by the end of September then; is that correct?

12 A Yes.

13 Q For the record that is September of 1994?

14 A Yes.

15 Q What happened to the old radios?

16 A Nextel gave us a credit of \$100 a piece
17 for the old radios and they took them.

18 Q Why don't we take this package of
19 documents here -- I was wondering where the first
20 three pages were -- here they are. We will mark this
21 packet of documents -- before we attach it to the
22 record, I will ask you if any of the documents that
23 appear in this package you think don't belong as a
24 part of it; and when I talk about "it" I am referring
25 to the relevant documents to the transfer of the old

1 radios to the new Nextel service that was done through
2 Colonial Pacific Leasing?

3 A The records of the old radios were never
4 part of their request; records of the old radios were
5 Mr. Kay's attorney's request so they didn't have
6 any --

7 Q Okay.

8 A -- but outside of that, the package is
9 all about my radios.

10 Q Would you just look through them and
11 verify that they are all true and correct, to the best
12 of your knowledge.

13 A Why don't you tell me what you are
14 concerned about, then, I can find it and tell you
15 whether it is here.

16 Q Maybe a better way to do this is to go
17 through it page by page.

18 First of all, this document from Colonial
19 Pacific Leasing dated August 29, 1994 that is the
20 lease agreement for your new radio equipment, correct?

21 A Yes.

22 Q I have another document here that I
23 believe is also for radio equipment from Nextel, and
24 it appears, although it is chopped off at the top,
25 that it is also from Colonial Leasing. Is this for

1 the new radio equipment?

2 A Yes, that is for the purchase of the
3 lease of the new radios.

4 Q And this is the back page?

5 A Yes.

6 Q Next, I will show you the Nextel Service
7 Agreement. Is this an accurate copy of the service
8 agreement that you signed for the Nextel service, to
9 the best of your knowledge?

10 A I can't be certain. There is no date on
11 there. I don't know if this is part of the real
12 package for the lease or whether this might have been
13 part of the proposal made. I am not sure.

14 Q Can you identify this document for me at
15 all?

16 A This appears to be a service date to
17 install radios, August 13 installation date, 9:00 in
18 the morning; if that happened to be a Saturday, that
19 is exactly what it was.

20 Q Just for the record, the identification
21 appears to have in form print "Technician:" then the
22 initials "DMC," with a date just below that of 8-13.

23 Now, I will ask you about this document.
24 It is entitled "Nextel Service Information."
25 Is this a document that you received in the course of

1 the changeover to the new radio system?

2 A Yes.

3 Q Then I have here three pages with a
4 handwritten note it says: "Customer Copy" at the
5 bottom of the first page and it says "Invoice" in the
6 upper left. It appears to be a computer printout. Is
7 this something that you recognize that you received in
8 the course of changing over to the new system?

9 A Yes.

10 Q Can you tell me what it is?

11 A It looks like a list of the equipment
12 that was part of my purchase from Nextel.

13 Q Next in the packet appears to be a letter
14 from TDM Financial Services, dated 8-29-94. I would
15 presume you received that in the process of obtaining
16 new radio equipment?

17 A Yes.

18 Q And another similar document here as well
19 from TDM Financial Services with the same date 8-29-94
20 with a lease number of 94-0030. Is this also
21 something that was used in the process of obtaining
22 new radio equipment?

23 A Yes.

24 Q Here is another document that appears to
25 be a Colonial Pacific Leasing document which lists the

1 Motorola equipment and it is dated and signed by you
2 on 8-17-1994.

3 Is this also a document that was used in
4 the process of your obtaining new radio equipment from
5 Nextel?

6 A Yes.

7 Q Can you recall whether or not Nextel gave
8 you a receipt for all the old radios. You mentioned
9 you received a \$100 credit for each one or something
10 to that effect?

11 A No, I don't recall whether they gave me a
12 receipt for those or not.

13 Q Can you recall if you received any
14 documentation from Nextel with regard to the trade-in
15 on the radios?

16 A No, I can't recall.

17 Q Did the people that were installing the
18 equipment from Nextel take the equipment with them
19 when they installed the new radio equipment?

20 A The radios -- my old radios disappeared
21 about the same time the new ones were being put in so
22 I assume so.

23 Q Are you using the Nextel portable units
24 or the ones that are actually installed in the vehicle
25 now?

1 A They are installed in the vehicle now.

2 MR. CRAWFORD: Let the record reflect that we
3 will attach as next in order the packet of documents
4 with the first page Colonial Pacific Leasing.

5 Q When was the last time you had any
6 communication with the FCC?

7 A Written?

8 Q Written, oral?

9 A Written -- it would be written and it
10 would be the letter from probably April 21. When I
11 received a letter from Mr. Fishel advising me that my
12 license had been reinstated, then, I wrote a letter to
13 Mr. Power on June 27th, that would probably be the
14 last one, June 27th, except for when my license came
15 through. It came through the mail. It just came. I
16 don't remember when.

17 Q When you speak of "the license" that is
18 the new license that we discussed earlier as an
19 exhibit?

20 A Yes.

21 Q Have you had any contact with anyone at
22 the FCC with regard to anything that is involved in
23 this particular case?

24 A Since June 27, 1994, no.

25 Q When you first sought to break the

1 agreement with Mr. Kay's Lucky's Two-Way Radios
2 business, what were the reasons that you had for not
3 wanting to have that service?

4 A Because I was lied to.

5 Q Was that because of what we have talked
6 about earlier with regard to the statements, I think,
7 you made that Mr. Berman told you that your license or
8 rather your radio service, had been transferred to
9 Lucky's from Nextel?

10 A That is correct.

11 Q Were there any other reasons other than
12 that?

13 A Are you asking me, was it more than one
14 reason. The total -- should I answer?

15 Q Yes, please. Basically, I am looking for
16 all of the reasons that you choose not to do business
17 with Lucky's Two-Way Radios subsequent to your meeting
18 and signing of agreements with Mr. Berman.

19 A One was that I was lied to. I never
20 solicited to do business with Mr. Kay's company,
21 Mr. Berman solicited me to do business with
22 Mr. Kay's company; as far as price goes he told me
23 they were going to keep the price the same. It was
24 all a matter of this had to be done, Fleet Call gave
25 me to them, sign these papers, nothing will happen, no

1 prices will go up, there will be no change in service;
2 and Mr. McGinnis, when he came in selling Nextel
3 equipment -- if he hadn't of told me, "The main office
4 said you are two months behind," and if Mr. Kay's
5 company had thought to cancel me, made the call for
6 me, and said, "Barnett is with us now, so cut him
7 off," so they wouldn't have continued to bill me, I
8 would never have known. I had no reason to ever find
9 out. My license would have been cancelled, and if no
10 one had ever arrested me for it, him and I would be
11 doing business right now --

12 other than he wasn't providing me service either, I
13 would have probably figured that out pretty quick.

14 Q In order to just close off this
15 particular line of discussion, have you now told me
16 all of the reasons that you had for discontinuing
17 Mr. Kay's Lucky's Two-Way radios?

18 A Probably not.

19 Q What others do you think you have as you
20 are sitting here today?

21 MR. CHRISTIANSON: He has told you all of the
22 ones he can think of right now, but give him some time
23 and he can probably think of some more.

24 THE WITNESS: That is true.

25 BY MR. CRAWFORD:

1 Q Have you told me, then, all of the
2 reasons that you can think of, as you sit here right
3 now, as to why you discontinued contact and business
4 with
5 Mr. Kay's Lucky's Two-Way Radios business?

6 A Can you tell me what I have said as far
7 as what my reasons are?

8 MR. CHRISTIANSON: She can repeat them, but I
9 think you pretty much covered them. You said you were
10 lied to, you weren't provided the service, they
11 cancelled your license. If you can think of some
12 others, tell him.

13 THE WITNESS: No, I was just concerned when we
14 got to court I wouldn't be able to add more. May I if
15 I think of some?

16 MR. CHRISTIANSON: Take your time. If you
17 think of some more right now, add them. If you think
18 of them later on, you can add them at the time of
19 trial.

20 THE WITNESS: Did I mention any phone
21 conversations with Mr. Kay?

22 BY MR. CRAWFORD:

23 Q You did not mention the phone
24 conversation with Mr. Kay.

25 A May I read from my notes?

1 Q Please do.

2 A This was February 23rd. I think the only
3 phone conversation I ever had with Mr. Kay, I called
4 him -- I think I opened the phone conversation with,
5 "What is going on? What are you doing to me? What is
6 happening to me here," something to that effect.

7 I told him at that time that Mr. Berman
8 had misrepresented the truth and the assignment from
9 Fleet Call to his company. And he said that Fleet
10 Call was going out of it, and as soon as the other
11 repeater is gone he will provide service -- "he,"
12 being Mr. Kay -- on Santiago.

13 I told him that I had been invoiced by
14 Fleet Call and Lucky's and I was two months behind on
15 Fleet Call, because I thought he was providing service
16 and Fleet Call was gone.

17 Mr. Kay said, "We have repeaters up there
18 and should be providing service to you at this time."

19 I said that I was paying for two
20 services, which I didn't need.

21 So that, also, was one of the reasons I
22 didn't want to do business with him. And I told him
23 in that phone conversation I didn't want to do
24 business with him.

25 He told me conflicting stories right then

1 and there. One, he is telling me that I should have
2 service from him at that time. Initially, he said he
3 was going to provide service as soon as their
4 repeaters are gone. Conflicting. With that kind of
5 talk and with what I knew what Mr. Berman said I
6 didn't want to do business with him.

7 And he did tell me at the time -- I
8 talked to him about I was going into the Nextel
9 system, and I told him my radios were old; and they
10 are, they are 15, 16 years old. And he asked me a
11 little about the Nextel system, was I aware how they
12 billed, that is one of the things he wanted me to be
13 aware of.

14 "Are you sure you know how they bill?"

15 And I frankly didn't, but I said, "Yes."
16 I didn't want to discuss that. He said, "If you want
17 to go over you can do so."

18 And I took that right out of our phone
19 conversation. That is all -- I guess that compounded
20 with Mr. Berman and the way that my license
21 disappeared, the lack of service, it just kind of
22 added up to stay where I was, since I didn't chose to
23 leave in the first place.

24 Q Have you used any of that older radio
25 gear -- when I talk about older radio gear I am

1 talking about the stuff you had before the Nextel
2 equipment. Have you used any of that equipment in the
3 last two years?

4 A Are you asking me, did it come back to
5 the yard and we used it, because once it left the yard
6 and whatever date it was we fired up -- no, it is
7 gone.

8 Q So the only form of the radio service you
9 have now is the Nextel service, right?

10 A Yes.

11 Q And it has been that way since you
12 started the Nextel service?

13 A Yes.

14 Q And that was since about September of
15 1994?

16 A Yes.

17 MR. CHRISTIANSON: August, look the date up, it
18 was on the document.

19 MR. CRAWFORD: When we were looking at the
20 documents it said August 29th, I believe, was one of
21 the dates. And I didn't want to box him into August
22 if -- I am just trying to make it reasonable.

23 Q Is there anyway that you know of, sir,
24 that we might be able to find in your documents
25 exactly when it was that you changed over to Nextel

1 service and began receiving service with them on their
2 new system?

3 A Yes.

4 Q Where would we find that?

5 A In your records, I had to provide all of
6 my invoices for communication services. You will see
7 when Fleet Call ended and when Nextel began.

8 Q Are you aware that when an FCC licensee
9 starts receiving and using SMR service that their
10 previous conventional license ceases at that
11 particular point?

12 A "SMR" meaning, I forgot -- what does that
13 mean, Mr. Kay?

14 Q Specialized mobile radio service.

15 A No, I am not aware of that.

16 Q To your knowledge, you still have your
17 radio license?

18 A Yes.

19 Q Would it surprise you to learn that you
20 don't have that license anymore because you started
21 using Nextel service?

22 A That would surprise me. Why haven't I
23 been told? You won't answer, so I retract the
24 question.

25 Q I am not your service provider and,

1 unfortunately, I am not qualified to answer that
2 question for you.

3 Are you aware at all, from any source,
4 that according to the FCC rules and regulations that a
5 licensee is required to cancel their license when they
6 cease using it and change it to an SMR system such as
7 the one that you are using now?

8 A No.

9 Q Are you also aware that when a licensee
10 ceases using a license for a period greater than a
11 year that the license cancels automatically?

12 A No.

13 Q You indicated that you received a notice
14 from Maconco that at some point in time your current
15 provider was going to be going off the air. As I
16 understood you, you were lead to believe by that
17 particular piece of correspondence that your current
18 provider was going off the air?

19 A I believe the notice started with, "You
20 might have been notified by now," that is how it
21 started.

22 Q Did that lead you to believe that your
23 current provider was going off the air?

24 A No, Maconco was my repair for my old
25 radios, so I knew that I was still on the mailing

1 list.

2 Q You are not aware of the process by which
3 a radio gets switched from one repeater to another,
4 right?

5 A No.

6 MR. CRAWFORD: Counsel, do you have any
7 questions that you would like to ask of the witness at
8 this time?

9 MR. CHRISTIANSON: I have no questions.

10 MR. CRAWFORD: Why don't we stipulate to
11 relieve the court reporter of her duties under the
12 code for maintenance of the transcript; the original
13 of the transcript will be forwarded to counsel for the
14 deponent, who will then give the deponent an
15 opportunity to read the deposition transcript; sign
16 the deposition transcript under penalty of perjury,
17 after having made any changes that counsel and
18 deponent deem necessary; if changes are so made,
19 counsel will give notice to all parties in this action
20 within 30 days of the nature of the changes that have
21 been made to the deposition transcript prior to
22 signing and, of course, whether or not the deposition
23 transcript was, in fact, signed under penalty of
24 perjury; counsel for the deponent shall maintain
25 custody of the original transcript and shall provide

1 Q Thank you.
2 I have a letter that I would like to mark as
3 Exhibit A.
4 (Plaintiff's Exhibit A was marked for
5 identification and is attached hereto.)
6 BY MR. SEIDEL:
7 Q Do you recognize this letter, Mr. Barnett?
8 A Yes, I do.
9 Q Did you write this letter?
10 A Yes, I did.
11 Q Did you type this letter?
12 A Yes, I did.
13 Q The signature at the bottom, is that your
14 signature?
15 A Yes, it is.
16 Q I would like to refer you to a sentence
17 approximately seven lines down from the top of the first
18 paragraph. I'll read a portion of the sentence. "I have
19 in my possession a taped phone conversation between
20 Mr. Kay and myself when I first was made aware that my
21 current carrier 'Fleetcall' had not assigned my radio
22 service to Mr. Kay's company." You drafted that
23 sentence; correct?
24 A Yes, I did.
25 Q Do you have possession of a taped phone

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1 A That sentence was untrue when I wrote it.
2 Q So it's your testimony, if I understand it,
3 that what you intended to do was attempt to get a taped
4 phone conversation of Mr. Kay?
5 A That's correct.
6 Q When did you intend on doing that?
7 A If I had received an answer back from this
8 letter requesting a tape or saying that that was a
9 pivotal issue, I would have attempted to get a tape.
10 Q What if you -- well, strike that.
11 Did you ever attempt to get a tape of
12 Mr. Kay speaking?
13 A No.
14 Q So you were only going to attempt to get a
15 taped phone conversation with Mr. Kay if the FCC
16 requested one; correct?
17 A That's correct.
18 Q Now, let me see if I understand your
19 testimony. This statement was untrue when you made it;
20 correct?
21 A That's true.
22 Q It's a correct statement that this was
23 untrue?
24 A That's a correct statement that that
25 statement is untrue.

11

1 conversation between Mr. Kay and yourself?
2 A No, I don't.
3 Q Have you ever taped a phone conversation
4 between yourself and Mr. Kay?
5 A No, I haven't.
6 Q Then it's not unfair for me to state that
7 this statement is untrue?
8 A That statement is untrue.
9 Q Why did you make that statement knowing that
10 it was untrue?
11 A Well, prior to writing this letter I had
12 received a letter from the FCC telling me that I was
13 going to have my license reinstated. After I received
14 that letter I received a copy of the petition that
15 Mr. Kay's attorney sent to Washington or Gettysburg still
16 fighting the issue, and I thought that if it was still in
17 the balance whether I was going to get my license back or
18 not and if a tape recording could make a difference that
19 would be absolutely pivotal, I was willing to try to get
20 a tape recording from Mr. Kay that he would repeat some
21 of the things he had told me already on the phone.
22 Q When you drafted this sentence that I
23 already read -- strike that.
24 This sentence I have read into the record
25 was untrue when you wrote it; correct?

10

1 Q That statement would remain untrue -- strike
2 that question.
3 And you had no immediate plans at the time
4 you drafted this statement to obtain a taped conversation
5 of Mr. Kay?
6 A No.
7 Q You didn't have any plans; correct?
8 A Not unless I heard back from the response of
9 this letter saying that they wanted to see a tape.
10 Q Are there any other statements in this
11 letter that are untrue? Take all the time you like to
12 review it.
13 A No, I don't think so.
14 Q I'm going to read the sentence right after
15 the one I read into the record. "Among other interesting
16 things he states that I was receiving service from both
17 companies."
18 A That's a quote from Mr. Kay. He told me he
19 was receiving service from both companies.
20 Q Was your intent in this letter to convey to
21 the FCC that that statement was on the tape?
22 A No.
23 Q I'm going to read both statements together
24 for the record. "I have in my possession a taped phone
25 conversation between Mr. Kay and myself when I first was

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1 made aware that my current carrier 'Fleetcall' had not
2 assigned my radio service to Mr. Kay's company. Among
3 other interesting things he states that I was receiving
4 services from both companies." To my reading,
5 Mr. Barnett, it sounds to me that you've stated in this
6 letter that you have a tape of Mr. Kay speaking, and
7 among the things he says is that you were receiving
8 service from both companies.

9 A Well, that's not how I meant it to sound.
10 He told me this during the phone conversation, and my
11 plan was to get him to repeat it.

12 Q But you were only going to attempt to get
13 him to repeat it if the FCC asked for a tape?

14 A That's true.

15 Q You mailed this letter approximately June
16 27, 1994?

17 A Yes.

18 Q Have you at any other time shown this letter
19 to anyone from the FCC?

20 A I don't think so.

21 Q Have you ever given this letter to any
22 attorney for the Federal Communications Commission?

23 A Not that I can recall.

24 Q Has the FCC or anyone from the FCC ever
25 asked you for a copy of this letter?

13

1 would be an order being faxed over.

2 Q And prior to that?

3 A I can't recall. It seems like it had to
4 have been a period of around February of '94 maybe.
5 Maybe February, but definitely of '94.

6 Q Do you recall who you spoke with?

7 A I spoke to a San Diego office. Maybe her
8 name was June. I spoke to Gettysburg, I believe her name
9 was Sharon.

10 Q Do you remember her last name?

11 A No.

12 Q Have you ever spoken to someone by the name
13 of Riley Hollingsworth?

14 A The name is really familiar. It seems I
15 have. Just the name is familiar. I don't know whether
16 it's because it's been bantered about or not. I don't
17 know.

18 Q Have you ever spoken to anyone with the
19 first name of -- strike the question.

20 Have you ever spoken to anyone from the
21 Federal Communications Commission who has a first name of
22 Ann Marie?

23 A It doesn't sound familiar.

24 MR. SEIDEL: I would like to go off the record for
25 a few minutes to copy some documents.

15

1 A Not that I can recall.

2 Q So to the best of your knowledge you sent
3 this letter on or about June 27, 1994 and never showed
4 this letter to anyone else connected with the FCC?

5 A That's true.

6 Q And just for the record, tell me if this is
7 your understanding, when I say FCC I mean Federal
8 Communications Commission?

9 A Yes, that's true, I haven't. I can't recall
10 sending this letter to anyone else. I think this was the
11 last letter that I wrote.

12 Q My last question to you, sir, was simply a
13 foundational question. So that I have it on the record,
14 when I said to you FCC you understood that I meant
15 Federal Communications Commission. Has that been your
16 understanding?

17 A Yes.

18 Q Okay. Thank you. When was the last time
19 you spoke with anyone from the FCC, if you recall?

20 A I believe I talked to Knowles-Kellett, one
21 of them yesterday just for clarification on the order
22 that had been faxed to me, the Judge's order.

23 Q And prior to that?

24 A One of these gentlemen called to let me know
25 there would be a deposition and the date, and that there

14

1 (Recess was taken.)

2 MR. SEIDEL: Back on the record.

3 Q I have only one more question with respect
4 to the letter marked as Exhibit A. Have you ever
5 informed anyone from the Federal Communications
6 Commission that the statements you made in that letter
7 were false?

8 A No.

9 Q This may refresh your recollection or it
10 certainly may get it started, but sometime in December of
11 1993 you met an individual named Mr. Berman; is that
12 correct?

13 A There is a Mr. Berman.

14 Q Please explain to me the first time you
15 heard from anyone from Lucky's Two-Way Radios.

16 A December 9, 1993.

17 Q Do you recall what happened on that day?

18 A Mr. Berman called my office wanting an
19 appointment to come in to discuss my change in radio
20 services. Actually, I would reword that. He started the
21 conversation something like that. It was -- I told him,
22 no, I wasn't interested in changing radio services.

23 And he said, no, he said, "You have been
24 assigned to my company and you have some papers to fill
25 out and it won't take long," or something to that effect.

16