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

DATE STAMP & RETURN

In the Matters of	)	
	)	
JAMES A. KAY, JR. Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area	)))	WT Docket No. 94-147
	)	
MARC SOBEL	)	WT Docket No. 97-56
	)	
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	))))	

FILED/ACCEPTED

APR 21 2010

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Russell H. Fox
Stefanie Z. Desai
Darren J. Abernethy
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Counsel to James A. Kay, Jr. and Marc D. Sobel

April 21, 2010

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 2

II. PROCEDURAL HISTORY 3

III. ARGUMENT 5

A. Reconsideration is not Circumscribed by Considerations of Administrative and Judicial Finality 5

B. The FCC did not Review Licensees' Arguments on The Merits or Engage in a Substantive Analysis Of The Alternative Proposal 9

1. The Order Failed to Consider Public Safety Communications Requirements Generally 9

2. The Commission Failed to Consider the Public Interest Benefits for Public Safety Entities in Southern California 12

IV. CONCLUSION 15

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

In the Matters of	)	
	)	
JAMES A. KAY, JR. Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area	)))	WT Docket No. 94-147
	)	
MARC SOBEL	)	WT Docket No. 97-56
	)	
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	))))	

PETITION FOR RECONSIDERATION

James A. Kay, Jr. ("Kay") and Marc D. Sobel ("Sobel") (collectively, "Licensees"), pursuant to Section 405 of the Communications Act of 1934, as amended, 5 U.S.C. § 405, and 47 C.F.R. § 1.429, by its undersigned counsel, hereby file this Petition for Reconsideration of the *Memorandum Opinion and Order* issued by the Federal Communications Commission ("FCC" or "Commission") on April 12, 2010.[1/]

1/ *James A. Kay Jr., Licensee of One Hundred Fifty Two Party 90 Licenses in the Los Angeles, California Area; 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 Licenses in the Los Angeles Area,* Memorandum Opinion and Order, FCC 10-55 (rel. April 12, 2010) ("*Order*"). The Licensees have simultaneously submitted a Motion for Stay of the *Order.*

I. INTRODUCTION AND SUMMARY

On April 12, 2010, the Commission issued an *Order* requiring the Licensees to cease operating facilities authorized by certain 800 MHz band licenses (the "Licenses") and dismissing Licensees' proposal for an alternative set of sanctions as provided in the Licensees' August 2005 *Motion to Modify Sanction* ("*Modification Motion*").[2/] The Licensees submitted the *Modification Motion* in response to the FCC's decision to revoke the Licenses as a sanction for violation of the Commission's rule. Under the proposed alternative sanctions, Licensees would have assigned UHF band spectrum licensed to them in the Southern California area for use in satisfying critical first responder and public safety communications requirements and would have made a voluntary payment to the United States Treasury. The *Order* summarily dismissed the Licensees' *Modification Motion* without any discussion of its merits or analysis of the public interest benefits it would have conveyed.

Licensees do not seek to disturb the FCC's judgment on the merits, nor the mandate issued by the District of Columbia Court of Appeals for the D.C. Circuit (the "D.C. Circuit" or the "Court") in the instant case. The Petition seeks reconsideration only of the *Order*'s rejection of the Licensees' proposal for modified sanctions, which was designed to better serve the public interest.

As discussed below, the Commission should grant the instant Petition for Reconsideration because the *Order* incorrectly applied the relevant law and failed to consider critical public safety and first responder interests. Accordingly, Licensees respectfully ask the Commission to reconsider the *Order*'s affirmation of the unreasonably punitive sanctions in

---

2/ *Order* ¶ 7.

favor of the alternative proposal's clear benefit to public safety users and first responders in the Los Angeles metropolitan area.

II. PROCEDURAL HISTORY

In 1997 and 1999, the Commission conducted two license revocation proceedings, one involving Kay[3/] and the other involving Sobel.[4/] On January 25, 2002, the Commission ultimately found that Kay and Sobel had engaged in an unauthorized transfer of control, by virtue of a 1994 management agreement that was disclosed to the Commission during the enforcement proceeding as a part of the discovery process. The Commission also found that the Licensees lacked candor in connection with supporting affidavits in a 1995 pleading because the Licensees' record statements mistakenly failed to reflect that the terms of the 1994 management agreement could be construed as an "interest" or "ownership" interest in the Licenses.[5/] The Commission revoked the Licenses as a sanction for the Licensees' violation of the Commission's

---

3/ *James A. Kay, Jr., Order to Show Cause, Hearing Designation Order, Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994); *Order*, 11 FCC Rcd 5324 (1996) (modifying hearing designation order); *Summary Decision of Administrative Law Judge Richard L. Sippel*, 11 FCC Rcd 6585 (ALJ 1996); *Memorandum Opinion and Order*, 12 FCC Rcd 2898 (1997) (reversing summary decision); *Memorandum Opinion and Order*, 13 FCC Rcd 16369 (1998) (denying pre-trial request extraordinary relief); *Order*, 13 FCC Rcd 23780 (1998) (removing ALJ Sippel as presiding officer); *Initial Decision of Chief Administrative Law Judge Joseph Chachkin*, 1999 FCC Lexis 4387 (ALJ 1999) (resolving all issues in Kay's favor); *Decision*, 17 FCC Rcd 1834 (2002) (reversing initial decision in part); *Memorandum Opinion and Order* (2002) (denying reconsideration).

4/ *Marc Sobel and Marc Sobel d/b/a Air Wave Communications, Order to Show Cause, Hearing Designation Order, Notice of Opportunity for Hearing for Forfeiture*, 12 FCC Rcd 3298 (1997); *Initial Decision of Administrative Law John M. Frysiak* , 12 FCC Rcd 22879 (1999) (resolving all issues against Sobel); *Decision*, 17 FCC Rcd 1834 (2002) (affirming initial decision in part); *Memorandum Opinion and Order*, 17 FCC Rcd 8562 (2002) (denying reconsideration); *Memorandum Opinion and Order*, 19 FCC Rcd 801 (1994) (denying further reconsideration).

5/ *James A. Kay, Jr.*, 17 FCC Rcd 1834 (2002) ("*Kay Decision*"), *recon. denied*, 17 FCC Rcd 8554 (2002) and *Marc Sobel*, 17 FCC Rcd 1872 (2002) ("*Sobel Decision*"), *recon. denied*, 17 FCC Rcd 8562 (2002), *further recon. denied*, 19 FCC Rcd 801 (2004), *consolidated on appeal and aff'd sub nom. Kay v. FCC*, 396 F.3d 1184 (D.C. Cir. 2005), *cert. denied*, 546 U.S. 871 (2005).

rules.[6/] The Commission's decisions did not find that the Licensees are unqualified to hold FCC authorizations.

On February 1, 2005, the Court upheld the Commission's decision, finding sufficient evidence in the administrative record to justify the Commission's conclusions concerning the "unauthorized" license transfer and lack of candor. However, the Court did not address the Commission's license revocation sanction.[7/] The United States Supreme Court denied certiorari[8/] and the D.C. Circuit denied a motion for further stay and issued a mandate upholding the FCC's legal findings, but did not address the sanctions at issue.[9/]

On August 3, 2005, the Licensees filed a *Motion to Modify Sanction* in which they asked the Commission to "rescind the license revocations, substituting for them a modified sanction package . . . ."[10/] The Licensees proposed that instead of license revocation, the Licensees would contribute spectrum for which they are licensed in the UHF band for public safety use and would also make payments to the Treasury. The Licensees urged the Commission to review this proposal, as it would serve the public interest by providing "additional spectrum for public safety" and "advanc[ing] and enhanc[ing] public safety communications in the Los Angeles area.[11/]

Since the *Modification Motion* was filed, representatives of the Licensees have met with Commission staff and provided additional supporting information. Among others, the

---

6/ *See Sobel Decision* ¶¶ 79-80; *Kay Decision* ¶ 100.

7/ *Kay v. FCC*, 396 F.3d 1184 (D.C. Cir. 2005).

8/ *Kay v. FCC*, 546 U.S. 871 (2005).

9/ *Kay v. FCC*, No. 02-1175 (D.C. Cir. Dec. 5, 2005).

10/ *James A. Kay Jr, Licensee of One Hundred Fifty Two Party 90 Licenses in the Los Angeles, California Area; Marc Sobel and Marc Sobel D/B/A Air Wave Communications Licensee of Certain Part 90 Licenses in the Los Angeles, California Area, Motion to Modify Sanction*, WT Docket Nos. 94-147, 97-56, at 7 (filed Aug. 3, 2005).

11/ *Id.* at 10.

Interagency Communications Interoperability System ("ICIS"), a cooperative of several local government jurisdictions in the Los Angeles area providing and interoperable public safety communications network operating in the UHF band, advised the Commission that it could make use of the spectrum that would be contributed under the alternative sanction proposal.

The Licensees have continued to operate their 800 MHz facilities based on numerous requests for extension that were granted in the *Order*.[12/] On April 12, 2010, the FCC issued the *Order* denying Licensees' *Modification Motion* and authorizing them to continue operations only until 12:01 a.m. on Friday, April 23, 2010.

III. ARGUMENT

A. Reconsideration is Not Circumscribed by Considerations of Administrative and Judicial Finality

The *Order* incorrectly states that further action in this proceeding is circumscribed by considerations of administrative and judicial finality. The Licensees recognize that the time for challenging the Commission's 2002 decisions has long passed. Although the Licensees continue to believe that a dispassionate review of the record would reveal that the sanctions imposed in this case are unprecedented in their severity, they do not ask the FCC to revisit its findings that Licensees violated the FCC's rules. Instead, Licensees ask that the FCC exercise its discretion to determine that there are alternative sanctions that adhere to the Commission's original decision but also provide a benefit to public safety entities in the Southern California area. The request that the FCC exercise its discretion to modify an earlier decision in a manner consistent with the public interest is not a late-filed request for reconsideration.

12/ These Motions are: Motion for Stay Pending Action on Motion to Modify, filed August 23, 2005, and a Motion for Extension of Operating Authority, filed October 17, 2005, and Motions for Further Extension of Operating Authority, filed January 17, 2006; April 12, 2006; July 19, 2006; October 12, 2006; January 9, 2007; April 11, 2007; July 10, 2007; October 9, 2007; January 18, 2008; April 17, 2008; July 11, 2008; September 15, 2008; December 11, 2008; March 12, 2009; June 8, 2009 ; September 15, 2009; December 9, 2009; and March 1, 2010.

The Commission also incorrectly asserts that it may not act because "judicial review has been completed; and the mandate of the appellate court has issued."[13/] However, the mandate of the D.C. Circuit is not an impediment to the FCC's grant of the relief that Licensees seek. As the Supreme Court has long held, a lower court "may consider and decide any matters left open by the mandate of this court."[14/] This well settled law[15/] similarly recognizes that an agency may act on an ancillary issue not reached in the appellate court's opinion.[16/] Indeed, a federal appellate court's supervisory authority over administrative agency actions is considerably restricted by comparison to their plenary authority over lower courts. As the Supreme Court has observed, a "much deeper issue" arises when an appellate court judgment is "not a mandate from court to court but from a court to an administrative agency."[17/]

Moreover, the fact that the Court of Appeals issued a "mandate" affords no finality to an ancillary matter. A "mandate" is merely a procedural device – it is simply a "copy of the

---

13/ *Order* ¶ 5.

14/ *Quern v. Jordan*, 440 U.S. 332, 348 (U.S. 1979); citing to *Sanford Fork & Tool*, 160 U.S. 247, 255 (1895) (Although the Supreme Court held that "whatever was before this court, and disposed of by its decree, is considered as finally settled"; it found that "the Circuit Court *may consider and decide any matters left open by the mandate* of this court; and its decision of such matters can be reviewed by a new appeal only.") (emphasis added). Indeed, the Court in Sanford seems to expect that a mandate may be analyzed to determine the Court's intention by a lower court. ("The opinion delivered by this court, at the time of rendering its decree, may be consulted to ascertain what was intended by its mandate . . . ." *Id.*; *Sprague v. Ticonic National Bank*, 307 U.S. 161, 168 (1939), "While a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues.").

15/ *See id.*

16/ *Singer Sewing Machine Company and Retail Wholesale, and Dept. Store Union, Local 101, AFL-CIO*, 150 N.L.R.B. 1319, 1322-1323 (1965) (recognizing that while a mandate controls as to other matters, the agency is free to address other issues not discussed in the appellate court's mandate).

17/ *See FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 141 (1940) (noting "On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction. But an administrative determination in which is imbedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." *Id.* at 145.

judgment, a copy of the court's opinion, if any, and [if applicable] any direction about costs."[18/] It "formally marks the end of appellate jurisdiction."[19/] Here, the mandate simply stated that the "orders appealed... in these cases are affirmed in accordance with the opinion of the court...."[20/]

Accordingly, the Court's 2005 opinion merely affirmed the FCC's conclusions that there was substantive evidence that Sobel transferred control of his stations to Kay without authorization[21/] and that the Commission "reasonably concluded" that the parties lacked the appropriate candor in the original hearing on "Kay's fitness to be a licensee."[22/] The opinion did not address the sanctions, much less affirmatively direct the FCC to impose such sanctions. Accordingly, there is no directive from the appellate court that would render the Commission without jurisdiction to rule on an ancillary issue that was *never before the court*. Shifting the focus of the sanctions from devastating Licensees' businesses to assisting public safety and making a significant contribution to the United States Treasury would leave the mandate in full effect, the legal judgment untouched and would better serve the public interest.

In the *Order*, the Commission asserts that Licensees have not shown good cause for it to request that the D.C. Circuit recall its mandate and cites the D.C. Circuit, which has stated that: "A mandate once issued will not be recalled except by order of the court for good cause shown. The good cause requisite for recall of mandate is the showing of need to avoid injustice."[23/] The Licensees agree with the statement of law but disagree with its application here. The Licensees

---

18/ Fed. Rule App. P. 41(a).

19/ *Johnson v. Bechtel Associates*, 801 F.2d 412, 415 (D.C. Cir. 1986).

20/ *James A. Kay, Jr. v. FCC*, No 02-1175 (dated Feb. 1, 2005).

21/ *James A. Kay, Jr. v. FCC*, 396 F.3d 1184, 1189-90 (D.C. Cir. 2005).

22/ *Id.* at 1190.

23/ *Order* ¶ 6 (*quoting Great Boston Television Corp. v. FCC*, 463 F.2d 268, 281-82 (D.C. Cir. 1971)).

have not asked for, and do not seek, a recall of the D.C. Circuit's mandate, as such a recall is not necessary for the Commission to grant Licensees' request. Similarly, the *Order* asserts that Licensees "fail to demonstrate factors sufficiently extraordinary to upset the principles of administrative and judicial finality and for the Commission to seek recall of the Court's mandate."[24/] The Commission's assertion misses the point. The Licensees recognize that the Commission's decision is final and the Court's decision, albeit limited, is also final. It does not seek to challenge either. Instead, it asks the Commission to exercise its authority and discretion to modify a prior decision in a manner that better promotes the public interest and does not conflict with the Court's mandate.

The *Order* is therefore incorrect when it asserts that Licensees were required to demonstrate that the Commission's existing decisions "constitute an injustice."[25/] While Licensees continue to believe, as noted above, that a rational review of the sanctions imposed on Licensees would reveal that they dramatically depart from any relevant Commission precedent, the Commission's assertion that a demonstration of injustice is required to grant Licensees the relief requested is not correct in this instance. A demonstration of injustice may be applicable if Licensees asked the Commission to reconsider its decision or to recall the Court's mandate. Licensees do neither. Accordingly, the Commission's asserted requirement rests on an inapplicable premise and misunderstanding of Licensees' request.

24/ *Id.*

25/ *Order* ¶ 6.

B. The FCC Did Not Review Licensees' Arguments On The Merits Or Engage In A Substantive Analysis Of The Alternative Proposal

The *Order* asserts that the "modified sanctions package does not yield such extraordinary public interest benefits as to justify upsetting considerations of administrative finality."[26/] As noted above, the relief that Licensees seek does not require the Commission to upset administrative finality (either its own or the Court's). Instead, the Licensees asked the Commission to exercise its discretion in this case to entertain alternative sanctions that would convey a critical benefit to public safety communications. Those benefits would be extraordinary to public safety agencies in Southern California and more extraordinary to the people whose lives and property would be better protected if the FCC seriously considered the alternative sanctions package. However, because the Commission did not provide any justification for rejecting out-of-hand the Licensees' alternative sanctions package, the *Order* must be reconsidered.

1. The Order Failed to Consider Public Safety Communications Requirements Generally

The *Order* overlooked the Licensees' argument that the Commission may adopt the proposed sanctions pursuant to the "broad" and "expansive" powers conferred to it by Congress to regulate based on and according to its reasoned assessment of the "public interest, convenience and necessity."[27/] The public interest directive provides the Commission wide authority to further its legislative policy.[28/] This power means that a Commission decision or

---

26/ *Id.*

27/ *See March 2010 Legal Memorandum* at 2-4; *see also FCC v. WNCN Listeners' Guild*, 450 U.S. 582, 594 (1981); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978); *FCC v. NBC (KOA)*, 319 U.S. 190, 219 (1943).

28/ *WNCN*, 450 U.S. at 593 (1981) (The public interest standard is "a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy.)"

judgment "regarding how the public interest is best served is entitled to substantial judicial deference," and "is not to be set aside" as long as its implementation of the public interest standard is "based on a rational weighing of competing policies."[29/] Accordingly, the Commission has expansive authority and discretion to implement, revise or retain policies if doing so advances the public interest.[30/]

In failing generally to consider the public interest, convenience and necessity, the Commission also failed to consider that the alternative sanctions would promote one of its principal obligations – improving public safety communications. Improving public safety communications has long been one of the Commission's strategic goals.[31/] The Commission has emphasized that "Communications during emergencies and crises must be available for public safety, health, defense, and emergency personnel, as well as all consumers in need. The Nation's critical communications infrastructure must be reliable, interoperable, redundant, and rapidly restorable."[32/]

Failing to consider seriously a solution that would both promote public safety and serve the public interest conflicts with the numerous Congressional directives that instruct the Commission to make decisions that reflect public safety interests and, in particular, which

---

(quoting *Pottsville*, 309 U.S. at 138). The standard "leaves wide discretion and calls for imaginative interpretation." *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953).

29/ *Id.* at 596.

30/ *In Re Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, Order on Reconsideration,* 19 FCC Rcd 3239, ¶ 19 (2004); *Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Notice of Proposed Rulemaking*, 19 FCC Rcd 708, 710, ¶ 3 (2004) (describing the Commission's broad authority under the Commission's general public interest standard).

31/ FCC Public Safety Website, http://www.fcc.gov/homeland/.

32/ *Id.*

promote the use of spectrum for public safety communications. For example, Congress directed that TV broadcasters transition to digital broadcast technology in order to vacate the 700 MHz band spectrum and facilitate the establishment of a nationwide, interoperable broadband communications network for use by public safety responders.

Members of Congress have also encouraged the Commission to make public safety a priority. In 2008, Rep. Jane Harman (D-CA), a Member of the Energy and Commerce Telecommunications and Internet Subcommittee and of the Homeland Security Committee, introduced legislation to authorize a nationwide, public safety broadband licensee and to fund the administrative and management costs of establishing an interoperable, public safety broadband network using 700 MHz spectrum.[33/] Just a few weeks ago, Rep. Boucher (D-VA), Chair of the House Telecommunications Subcommittee, noted that the "Commission's proposal for auctioning to commercial bidders the D Block of the 700 MHZ spectrum without onerous conditions is commendable. The proceeds from the auction should be applied to helping first responders purchase and install the equipment needed to bring to fire, police and rescue agencies nationwide a truly interoperable communications capability."[34/]

Similarly, Senator John McCain (R-AZ), former Chair of the Senate Commerce, Science and Transportation Committee, has said, "[t]he Federal government needs to (1) develop a comprehensive interoperable communications plan and set equipment standards, (2) fund the purchase of interoperable communications equipment and (3) provide public safety with

---

33/ Harman Introduces Legislation to Promote Interoperable Public Safety Network, Press Release, May 14, 2008, *available at* http://harman.house.gov/2008/05/5-14-08.shtml.

34/ Statement of Congressman Rick Boucher, Subcommittee on Communications, Technology and the Internet Hearing, Oversight of the Federal Communications Commission: The National Broadband Plan, Mar. 25, 2010, *available at* http://energycommerce.house.gov/Press_111/20100325/Boucher.Statement.03.25.2010.pdf.

additional spectrum so first responders can communicate using the same radio frequencies and equipment in the event of an emergency."[35] Congressman Joe Barton (R-TX), former chair of the House Energy and Commerce Committee, noted in 2005 that even "[f]our years after Sept. 11 and we still have a problem with interoperability."[36] U.S. Rep. Fred Upton (R-MI), former chair of the Telecommunications Subcommittee, also commented on the need to "free up part of that spectrum" so that "we will be able give it to our first responders."[37] As Congress has advocated, the Commission should honor its commitment to improving the communication system used by police, firefighters and other public safety agencies by revisiting the *Order* and adopting the proposed sanctions.

2. The Commission Failed to Consider the Public Interest Benefits for Public Safety Entities in Southern California

The spectrum that the Licensees propose to contribute is useful to and needed for public safety communications capabilities in the Southern California area — which contains America's second largest city, a major international port, and the site of more natural disasters than most U.S cities (*e.g.*, wild fires, mudslides, and earthquakes). The Commission has recognized that "public safety entities have come to rely upon the 470-512 MHz band for their radio

---

35/ 151 CONG. REC. S.9973 (2005).

36/ House Energy and Commerce Committee, Press Release, "Katrina Exposes Problems in First Responder Communication," Sept. 29, 2005, *available at* http://republicans.energycommerce.house.gov/News/PRArticle.aspx?NewsID=6284.

37/ *Id.*

communications requirements."[38/] Indeed, the Commission recently reallocated television channel 15 for public safety use in the Los Angeles area.[39/]

Public safety agencies in Southern California already rely heavily on UHF band spectrum to meet critical interoperable communications requirements. However, there is virtually no UHF spectrum available to expand those capabilities. There remains a shortage of adequate UHF spectrum for public safety needs in the Los Angeles area. Agencies that wish to be part of existing interoperable systems cannot join because of a lack of spectrum. Access to this spectrum will allow those agencies to become integrated into existing networks. The additional capacity afforded by this action would have a direct and immediate impact on the ability of public safety agencies to serve and protect the public by providing a robust, broadly available platform for interoperable communications between public safety agencies during both routine and emergency situations. The alternative proposal addresses the spectrum needs of, and has received support from, numerous public safety agencies in the Southern California area, which currently use the spectrum, as well as representatives of jurisdictions who currently cannot avail themselves of certain UHF-based public safety platforms due to a lack of available spectrum. Several public entities have already explicitly noted to the Commission how the potential benefits that the spectrum that is the subject of the alternative sanction would have on public safety communications in Southern California.[40/]

While regional and nationwide networks are being planned using, among others, 700 MHz and 800 MHz band spectrum, the UHF spectrum that is heavily used in Southern California

---

38/ *License Communications Services, Inc.*, 13 FCC Rcd 23781 (1998).

39/ *See County of Los Angeles, California, Request for Waiver of the Commission's Rules to Authorize Public Safety Communications in the 476-482 MHz Band*, File No. 0002981309 *et al.*, Order, 23 FCC Rcd 18389 (2008).

40/ Letters sent by several public safety agencies are attached at Exhibit A hereto.

is important today to meet current needs. It is expected that this UHF spectrum and the existing public safety networks will be incorporated into developing regional and nationwide systems, helping to promote the goals of interoperable public safety systems.[41/]

The Commission erred in not taking these needs, and the communications from public safety officials, into consideration in the *Order*. Public safety officials have already begun to consider the potential disposition of the UHF channels, and the specific benefits they can bring to the protection of the safety of life and property in southern California. Failing to address the potential use of this spectrum for public safety purposes would now frustrate the needs of public safety officers and organizations in southern California, as well as the State and Federal elected officials who also took considerable interest in the potential benefits the alternative proposal offers to the functionality and interoperability of public safety and municipal communications throughout Southern California.

41/ As the Commission has explained: "The Los Angeles region is unique in this country in that it has been planning for some time to heavily implement mutual aid provisions with equipment operating in the 450-512 MHz band, in keeping with the Commission's channel 16 allocation. Because this equipment cannot operate in the 800 MHz band, effective mutual aid would be hindered if the Los Angeles area public safety institutions involved here could not obtain frequencies in the 450-512 MHz band. We take note of the efforts that have been made to use the 450-512 MHz frequencies efficiently and are satisfied that alternative frequencies in this part of the spectrum in Los Angeles are not available." *Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services*, 4 FCC Rcd 6415 at 6419 (footnote omitted).

IV. CONCLUSION

For the foregoing reasons, Licensees respectfully requests that the Commission reconsider the *Order* that requires them to forfeit their licenses effective April 23, 2010.

Respectfully Submitted,

Russell H. Fox
Stefanie Z. Desai
Darren J. Abernethy
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Counsel to James A. Kay, Jr. and Marc D. Sobel

April 21, 2010

CERTIFICATE OF SERVICE

I, Darren Abernethy, do hereby certify that on this 21st day of April, 2010, a true and correct copy of the foregoing was served on the following via E-mail:

William Davenport, Associate Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W. – Room 7-C723
Washington, D.C. 20554

Austin Schlick, General Counsel
Federal Communications Commission
445 12th Street, S.W. – Room 8-B724
Washington, D.C. 20554

Darren Abernethy

Darren J. Abernethy

EXHIBIT A

CITY OF CLAREMONT

Paul Cooper, Chief of Police
Police Department

570 West Bonita Avenue
Claremont, CA 91711-4626
FAX (909) 399-5435
Administrative Fax (909) 399-5439

Administration • (909) 399-5404
Administrative Services Bureau • (909) 399-5409
Detective Bureau • (909) 399-5420
General Information • (909) 399-5411

April 5, 2010

Mr. David Furth
Deputy Bureau Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Additional UHF Spectrum for Public Safety in Greater Los Angeles

Dear Mr. Furth:

We understand that the FCC has an opportunity, in an enforcement proceeding, to dedicate additional UHF spectrum in the 470-512 MHz band to support interoperable public safety communications in the Los Angeles area. We strongly support the proposal that would lead to the greater availability of UHF spectrum for public safety use.

It is well documented that Los Angeles is one of the most spectrum-constrained areas in the country. This is particularly true in the UHF band, which most agencies within the county rely on as their primary source of communications capacity. The additional capacity afforded by this action would have a direct and immediate impact on our ability to serve and protect the public by providing a robust, broadly available platform for interoperable communications between public safety agencies during both routine and emergency situations.

Like most public safety entities, we look forward to the time when there is a nationwide, interoperable public safety system using 700 MHz spectrum. However, the deployment of that system is years away. The Los Angeles Regional Interoperable Communications System (LA-RICS) project is moving forward with an anticipated implementation that is five or more years in the future. In the interim, further development of our system with UHF band spectrum is consistent with both the future plans for LA-RICS, ICIS, as well as all current local interoperability plans.

Even after a nationwide interoperable public safety network is created, LA-RICS, the Interagency Communications Interoperability System (ICIS), and the UHF spectrum that both will continue to use, will play an important role in regional operations and as a component part of a national public safety system. The FCC should continue to support the requirements of public-safety and enable this unique opportunity for agencies within greater Los Angeles to secure additional UHF spectrum capacity.

Respectfully submitted,

PAUL COOPER
Chief of Police

Gary Jenkins
Captain

c: file

April 5, 2010

Mr. David Furth
Deputy Bureau Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Additional UHF Spectrum for Public Safety in Greater Los Angeles

Dear Mr. Furth:

We understand that the FCC has an opportunity, in an enforcement proceeding, to dedicate additional UHF spectrum in the 470-512 MHz band to support interoperable public safety communications in the Los Angeles area. We strongly support the proposal that would lead to the greater availability of UHF spectrum for public safety use.

It is well documented that Los Angeles is one of the most spectrum-constrained areas in the country. This is particularly true in the UHF band, which most agencies within the County rely on as their primary source of communications capacity. The additional capacity afforded by this action would have a direct and immediate impact on our ability to serve and protect the public by providing a robust, broadly available platform for interoperable communications between public safety agencies during both routine and emergency situations.

Like most public safety entities, we look forward to the time when there is a nationwide, interoperable public safety system using 700 MHz spectrum. However, the deployment of that system is years away. The Los Angeles Regional Interoperable Communications System (LA-RICS) project is moving forward with an anticipated implementation that is five or more years in the future. In the interim, further development of our system with UHF band spectrum is consistent with both the future plans for LA-RICS, ICIS, as well as all current local interoperability plans.

Even after a nationwide interoperable public safety network is created, LA-RICS, the Interagency Communications Interoperability System (ICIS), and the UHF spectrum that both will continue to use, will play an important role in regional operations and as a component part of a national public safety system. The FCC should continue to support the requirements of public-safety and enable this unique opportunity for agencies within greater Los Angeles to secure additional UHF spectrum capacity.

Respectfully submitted,

Signature

SCOTT PICKWITH

Name

CHIEF OF POLICE

Title

LA VERNE PD.

Agency

April 5, 2010

Mr. David Furth
Deputy Bureau Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Additional UHF Spectrum for Public Safety in Greater Los Angeles

Dear Mr. Furth:

We understand that the FCC has an opportunity, in an enforcement proceeding, to dedicate additional UHF spectrum in the 470-512 MHz band to support interoperable public safety communications in the Los Angeles area. We strongly support the proposal that would lead to the greater availability of UHF spectrum for public safety use.

It is well documented that Los Angeles is one of the most spectrum-constrained areas in the country. This is particularly true in the UHF band, which most agencies within the County rely on as their primary source of communications capacity. The additional capacity afforded by this action would have a direct and immediate impact on our ability to serve and protect the public by providing a robust, broadly available platform for interoperable communications between public safety agencies during both routine and emergency situations.

Like most public safety entities, we look forward to the time when there is a nationwide, interoperable public safety system using 700 MHz spectrum. However, the deployment of that system is years away. The Los Angeles Regional Interoperable Communications System (LA-RICS) project is moving forward with an anticipated implementation that is five or more years in the future. In the interim, further development of our system with UHF band spectrum is consistent with both the future plans for LA-RICS, ICIS, as well as all current local interoperability plans.

Even after a nationwide interoperable public safety network is created, LA-RICS, the Interagency Communications Interoperability System (ICIS), and the UHF spectrum that both will continue to use, will play an important role in regional operations and as a component part of a national public safety system. The FCC should continue to support the requirements of public-safety and enable this unique opportunity for agencies within greater Los Angeles to secure additional UHF spectrum capacity.

Respectfully submitted,

Signature

KIM J. RANEY

Name

CHIEF OF POLICE

Title

COVINA P.D.

Agency

Mr. David Furth
Deputy Bureau Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Additional UHF Spectrum for Public Safety in Greater Los Angeles

Dear Mr. Furth:

It is our understanding that the FCC is currently considering a proposal in an enforcement matter in which additional spectrum in the 470-512 MHz segment of the UHF band could be made available for use by public safety entities in the Greater Los Angeles area. We strongly support this proposal.

As you may know, several jurisdictions in Greater Los Angeles are part of the Interagency Communications Interoperability System (ICIS). ICIS provides interoperable public safety communications to its users, allowing effective region-wide responses to incidents like the 2005 Metrolink crash and the 2009 Station Fire. Unfortunately, the ICIS system is currently spectrum constrained. If the FCC were to make additional UHF spectrum available to ICIS, more public safety agencies, like ours, could become part of ICIS, further promoting public safety interoperability in a metropolitan area that is home to 17 million residents, two of our nation's largest ports, and which is prone to both wildfires and earthquakes.

We recognize that the FCC contemplates the operation of a nationwide, interoperable public safety system in the 700 MHz band. However, that nationwide system will not eliminate the critical role that ICIS plays for regional coordination and, ultimately, as part of the nationwide network. Therefore, we strongly urge you to take this unique opportunity to make additional UHF spectrum available for ICIS.

Respectfully submitted,

Signature	Signature
RANDY G. ADAMS	STEPHEN GARZA
Name	Name
CHIEF OF POLICE	CAPTAIN
Title	Title
BELL P.D.	DOWNEY P.D.
Agency	Agency

Signature

PAUL WADLEY
Name

CHIEF
Title

HUNTINGTON PARK
Agency

Signature

ROBERT BARNES
Name

CHIEF-INTERIM
Title

BELL GARDENS
Agency

Signature

George Troxell
Name

Chief
Title

South Gate PD.
Agency

Signature

STEVE TOWLES
Name

CHIEF
Title

VERNON
Agency

Signature

Tom Sonoff
Name

Chief of Police
Title

Signature

Name

Title

Agency