

**FEDERAL COMMUNICATIONS COMMISSION**

[WT Dkt. No. 97-56; FCC 97-38]

**Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture****AGENCY:** Federal Communications Commission.**ACTION:** Notice; Hearing Designation Order.

(Authority: 47 U.S.C. §§ 312 and 503; 47 CFR § 0.411(c))

**SUMMARY:** On February 6, 1997, (released February 12, 1997) the Commission designated pending applications and finder's preference requests filed by Marc Sobel, and licenses held by Marc Sobel and Marc Sobel d/b/a Air Wave Communications (collectively "Sobel") for hearing to determine if an unauthorized transfer of control occurred in violation of 47 U.S.C. § 310(d). In addition the Commission directed the ALJ to determine if Sobel is qualified to be a licensee, and to determine if an order for forfeiture should issue. The Commission designated these matters for hearing at a time and place to be designated in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Gary Schonman at (202) 418-0569, FCC 1919 M St., NW.

**SUPPLEMENTARY INFORMATION:** The following is a synopsis of the Commission's order. The full text of the order is available for inspection and copying at the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, D.C. The text of the order may also be purchased by calling ITS at (202) 857-3800.

The results of the Commission's predesignation investigation indicate that on December 30, 1994, Sobel and another land mobile licensee in the Los Angeles area, James A. Kay, Jr. ("Kay"), executed a so-called Radio System Management and Marketing Agreement ("Agreement") involving several of Sobel's stations, all of which provide service to subscribers. The Agreement, as amended, expressly covers the following stations: Stations KNBT299, WNYE761, WNYR424, WPF529, WNXL471, WPAD685, KRU576, WPCN239, WPCZ354, WPCG780, WNWB334, WNZS492, WPDB603, WPFH460, and WPCA891. The Agreement contemplates, among other things, that if the stations have not already been built, Kay will construct them at Kay's expense; Kay will serve as the exclusive supplier of equipment and labor to maintain each of the stations;

Kay will be the exclusive marketing agent for the sales of service to the public and/or persons eligible to receive service from each of the stations; Kay will serve as the sole manager of each of the stations; Kay will compensate all employees, agents, and independent contractors and pay all insurance, taxes and other costs arising out of the employment of workers at each of the stations; Kay will maintain all financial records and contracts associated with the operations of each of the stations; and Kay will bear all responsibility for paying utility, telephone, site rental, radio equipment, and legal expenses associated with the operations of each of the stations. In consideration for these services, the Agreement provides that Kay will receive the first \$600 of gross revenues per month from the operation of each of the stations, and half of all remaining gross revenues per month from the operation of each of the stations. The Agreement runs for 10 years and renews automatically (unless Kay elects otherwise) for five 10 year periods (for a total of 50 years). The Agreement also grants to Kay, in consideration for \$100, an irrevocable 10 year option to purchase any or all of the covered stations, including the assignment of each associated FCC license, for \$500 per station upon demand by Kay. The Agreement requires Sobel to maintain exclusive ownership of the subject stations during the term of the Agreement, free of all liens and encumbrances, "until and unless said license(s) are assigned to" Kay.

In determining whether *de facto* control of a non-broadcast license or facility has been transferred in violation of § 310(d) of the Communications Act, the Commission and the courts have traditionally relied upon a six-part test announced in *Intermountain Microwave*, 24 RR 983 (1963). When the *Intermountain* factors are applied to the Agreement between Sobel and Kay, a substantial and material question arises as to whether Sobel has willfully and/or repeatedly engaged in unauthorized transfers of control of his stations to Kay, in violation of § 310(d) of the Communications Act of 1934, as amended. Sobel and Kay executed the Agreement a mere two weeks after the Commission formally placed Kay's basic qualifications to remain a licensee in issue. *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994) (requiring Kay to show cause why his licenses should not be revoked). The nature and timing of Sobel's arrangement with Kay raise

serious questions concerning Sobel's compliance with § 310(d) of the Act and, as a consequence, Sobel's basic qualifications to be and remain a Commission licensee.

The Commission designated specific applications for hearing and directed Sobel to show cause why his licenses should not be revoked, in a consolidated proceeding before an FCC Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues: (a) To determine whether Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications have willfully and/or repeatedly violated § 310(d) of the Communications Act of 1934, as amended, by engaging in unauthorized transfers of control of their respective stations to James A. Kay, Jr.; (b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications are qualified to be and remain Commission licensees; (c) To determine whether the above-captioned applications filed by Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications should be granted; and (d) To determine whether the above-captioned licenses held by Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications should be revoked. The Commission also directed the ALJ to determine, pursuant to § 503(b)(2)(B) of the Communications Act of 1934, as amended, whether an Order of Forfeiture shall be issued against Marc Sobel and/or Marc Sobel d/b/a Air Wave Communications in an amount not to exceed \$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act, for having willfully and/or repeatedly violated § 310(d) of the Communications Act of 1934, as amended. The Commission also placed the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues (a), (b), and (d) above shall be on the Wireless Telecommunications Bureau, and burden of proceeding with the introduction of evidence and the burden of proof with respect to the issue at (c) above on Sobel.

Federal Communications Commission.

**Shirley S. Suggs,**

Chief, Publications Branch.

[FR Doc. 97-12075 Filed 5-8-97; 8:45 am]

BILLING CODE 6712-01-P