

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the matter of)	
)	
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)	

MEMORANDUM OPINION AND ORDER

Adopted: January 8, 2004

Released: January 15, 2004

By the Commission:

I. INTRODUCTION

1. This order denies a Petition for Reconsideration, filed June 7, 2002, by Marc D. Sobel, and clarifies the relationship of certain matters to this hearing proceeding.¹ Sobel seeks reconsideration of the Commission’s order on reconsideration in Marc Sobel, FCC 02-138 (May 8, 2002) (Reconsideration Order), in which the Commission denied Sobel’s previous petition for reconsideration of the Commission’s decision in Marc Sobel, 17 FCC Rcd 1872 (2002), recon. denied, FCC 02-138 (May 8, 2002), appeal pending, No. 02-1174 (D.C. Cir. Jun. 5, 2002) (Decision).

II. BACKGROUND

2. By way of background, in our Decision, we revoked certain of Sobel’s licenses and denied certain of his applications for land mobile facilities. We found that Sobel had transferred control of some of his facilities without authorization, in violation of 47

¹ Also before the Commission is an opposition, filed June 20, 2002, by the Enforcement Bureau, and a reply, filed July 2, 2002, by Sobel. Sobel filed supplements to his petition on September 17, 2002, and March 5, 2003.

U.S.C. § 310(d), and lacked candor in a filing concerning these stations. Additionally, in the course of these proceedings, Sobel filed a pleading entitled “Request for Inquiry and Investigation” (Request).² The Request alleged that the Commission’s Wireless Telecommunications Bureau (WTB), among other things, committed misconduct in the investigation and prosecution of this proceeding and displayed bias against Sobel and his associates. In our Decision, we held that no further action on the Request was warranted. 17 FCC Rcd at 1875-78 ¶ 9. Specifically, we noted that Sobel stated that the Request did not challenge the presiding administrative law judge’s conduct of the hearing or the Commission’s action in designating the hearing. Rather, Sobel said that the Request sought a separate investigation of the Bureau. Because Sobel did not challenge the conduct or designation of the hearing, our Decision held that the Request did not bear on our review of the initial decision. Even so, we examined the allegations contained in the request to ensure that WTB’s alleged conduct had not prejudiced Sobel in this proceeding. Based upon a review of the full record in this proceeding, we held that there was an ample basis to designate this proceeding for hearing and that Sobel received a full opportunity to meet the issues raised. In the absence of any material prejudice to Sobel, we found no basis to take further action on the Request in this proceeding. We did not, however, address the Request in the ordering clauses of the Decision.

3. In our Reconsideration Order denying reconsideration of the Decision, the Commission did not address further the merits of the Request. However, we noted that:

Kay and Sobel observe [in their petitions for reconsideration] that the ordering clauses in our decision did not explicitly address the [Request]. We will remedy this oversight and deny the request in this order.

FCC 02-138 at ¶ 11. We added an ordering clause denying the Request. *Id.* at ¶ 10.

III. PLEADINGS

4. In his current petition for reconsideration, Sobel states that: “For purposes of the *Request for Inquiry*, Sobel is not – as he repeatedly stated – seeking relief from sanctions that may be imposed in the license revocation proceeding.” Petition for Reconsideration at 2 ¶ 3. Sobel indicates that he seeks to bring to the Commission’s attention Bureau misconduct and asks the Commission to conduct an investigation completely separate from this proceeding. He states: “Whether or not Sobel was prejudiced – indeed whether or not Sobel should prevail in the hearing case – is an entirely separate and irrelevant matter.” Petition for Reconsideration at 3 ¶ 5. Accordingly, Sobel contends that it was improper for the Commission to deny the Request without further addressing the merits of the allegations made.

5. The Enforcement Bureau (Bureau) responds in its Opposition that the Commission appropriately addressed the Request. The Bureau states that WTB filed an extensive opposition to the Request that dealt exhaustively with the allegations contained therein. The Bureau further states that the Commission addressed the allegations in the

² Sobel filed the Request on February 27, 1998 and filed a revised Request on March 2, 1998.

Request, that Sobel was afforded a full opportunity to meet the issues, and that no further action is warranted.

6. Sobel answers in its Reply that the issue is not whether these matters should have been addressed in the license revocation proceedings. Rather, Sobel explains that the issue is the Commission's failure to consider all of the factual allegations. Sobel states that he assumed that because the Commission did not consider the allegations further in the hearing proceeding, this implied that the Request would be considered outside the context of the hearing proceeding and that the Request was still pending. Sobel therefore contends that the Commission should address the merits of the Request further.

IV. DISCUSSION

7. We deny reconsideration and clarify that the Commission's prior order denying the Request demonstrates that no further consideration of the allegations contained in the Request is warranted in the context of this proceeding. Sobel's Request asked the Commission to conduct an investigation:

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.

Revised Request at 55. Sobel specified that "appropriate relief" should "redress the violations of Sobel's procedural, substantive, and civil rights." *Id.* at 2 ¶ 2. The Commission's Decision recognized that Sobel's request for relief raised the issue of whether the Bureau's alleged conduct prejudiced the designation or prosecution of this proceeding and thereby called for remedial measures by the Commission to ensure that Sobel's right to a fair hearing had not been abridged.

8. Our Decision indicates that we fully considered the Request insofar as it raised issues of potential prejudice to Sobel in this license revocation proceeding and that the Commission concluded that with respect to this question no further action was warranted. Neither Sobel's earlier petition for reconsideration of the Decision nor his instant petition directed to the Reconsideration Order raises any challenge to that conclusion. Indeed, Sobel makes clear that his petition for reconsideration does not seek relief from sanctions imposed in the revocation proceeding.

9. To eliminate any possible uncertainty on this point, we wish to reemphasize and to state in one place that we have fully considered all of the issues raised, with a view to any potential prejudicial effect. We rejected on its merits the one issue raised by the Request that directly implicates the disposition of the revocation proceeding involving Sobel. Sobel alleges that the WTB had no valid basis to seek the designation of issues against him. Revised Request at 3-12 ¶¶ 3-21. In our Decision, however, we concluded

that the allegations against Sobel were well-founded, and we revoked his licenses and denied his applications on that basis. 17 FCC Rcd at 1893-94 ¶¶ 79-80.

10. We also rejected on the merits Sobel's complaint that he was treated unfairly because the proceedings against him were motivated by the WTB's unfounded bias against one of Sobel's business associates, James A. Kay, Jr. In our Decision, we found ample basis to fault Kay's relationship with Sobel. We held that Sobel had transferred control of some of his facilities to Kay without authorization and that Sobel lacked candor in an affidavit filed on behalf of Kay. In a decision in a related proceeding, we imposed sanctions against Kay for his participation in this and other misconduct. James A. Kay, Jr., 17 FCC Rcd 1834 (2002), recon. denied, FCC 02-137 (May 8, 2002), appeal pending, No. 02-1175 (Jun. 5, 2002). As an indication of WTB's bias against Kay, Sobel complains that WTB had no valid basis to seek the designation of issues against Kay (Revised Request at 28-30 ¶¶ 57, 38 ¶¶ 75-76), a position we rejected in the Kay proceeding.³

11. Finally, Sobel's remaining allegations raise no possibility of prejudice. Sobel complains that WTB conduct evidences a pattern of bias in favor of Kay's "enemies" (*i.e.*, his competitors) who complained about Kay. First, Sobel complains that the WTB practiced a double standard in which it ignored misconduct by Kay's enemies, such as Harold Pick, James Doering, Liberty Paving, Inc., and Christopher C. Killian, at the same time it was pursuing allegations of misconduct against Kay and Sobel. Revised Request at 13-27 ¶¶ 22-52. Second, Sobel accuses the WTB of attempting to interfere with Kay's business by frustrating Kay's efforts to obtain a cancelled license held by Thompson Tree Service (Revised Request at 32-34 ¶¶ 62-68) and by hampering Kay's efforts to prosecute Harold Pick for theft (Revised Request at 35-37 ¶¶ 69-74). Third, Sobel accuses the WTB of using a section 308(b) letter of inquiry to harass Kay and injure his business, an allegation rejected in the Kay proceeding.⁴ Fourth, Sobel charges that the WTB participated in the preparation of false statements by Harold Pick and Richard L. Lewis.⁵ Revised Request at 39-53 ¶¶ 77-99.

12. The allegations that the WTB favored Kay's enemies over Kay do not raise any possibility of prejudice in this or the Kay proceeding. They did not involve the designation or prosecution of the proceedings and thus did not affect the ability of the presiding administrative law judges or the Commission to fully and fairly deliberate on the issues relating to Sobel's licenses.⁶

³ In addition to the transfer of control and lack of candor issues discussed above, we considered other issues. In a prior order, we held that WTB had shown good cause to seek issues relating to Kay's response to WTB's 308(b) letter of inquiry and the loading of Kay's land mobile stations. James A. Kay, Jr., 13 FCC Rcd 16369, 16372-73 ¶¶ 10-11 (1988), pet. recon. denied, 14 FCC Rcd 1291 (1998).

⁴ We specifically rejected the allegation that WTB had failed to give Kay adequate assurance that his business information would be treated as confidential. 17 FCC Rcd at 1848 ¶ 14; 13 FCC Rcd at 16374 n. 3.

⁵ The allegedly false statements were not used in either the Kay or Sobel proceedings. 13 FCC Rcd at 16374 ¶ 15.

⁶ Similarly, the additional alleged examples of a "continuing pattern of animus, discrimination, and selective prosecution" during the years 1999-2003, set forth in Sobel's supplements, filed September 17, 2002, and March 5, 2003, raise no question of potential prejudice in the revocation proceeding. Because

13. As previously noted, Sobel's petition does not challenge the conclusions set forth above regarding prejudice. Sobel, however, now indicates that the Request has the more general purpose to: "bring to the Commission's attention numerous instances of seriously improper and unethical (and in some instances potentially illegal) misconduct on the part of Commission personnel and to ask that the Commission fully investigate these matters." Petition for Reconsideration at 2 ¶ 3. Having considered the Request in our Decision, the Commission is aware of Sobel's allegations, which WTB has denied in all respects in an opposition filed March 13, 1998. We deny the Request here, and find that there was no prejudicial staff misconduct. We note, however, that any member of the public has the right to bring alleged staff misconduct to the Commission's attention for a possible internal investigation, even if they do not have standing to challenge a regulatory proceeding where staff misconduct may have led to prejudice or other procedural rights. The Commission will take such allegations extremely seriously, and will determine whether an internal investigation is warranted.

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, That the Enforcement Bureau's Motion to Strike Supplements to Petition for Reconsideration, filed March 25, 2003, and the Motion for Leave to File Supplements, filed May 12, 2003, by Marc D. Sobel ARE DISMISSED as moot.

15. IT IS FURTHER ORDERED, That the Petition for Reconsideration, filed June 7, 2002, by Marc Sobel, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

we see no need to discuss the merits of the supplements in detail, we will dismiss as moot the Enforcement Bureau's Motion to Strike Supplements to Petition for Reconsideration, filed March 25, 2003, and the Motion for Leave to file supplements, filed May 12, 2003, by Sobel.