

COPY

Mr. Alan Dahle
April 1, 1996
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We are again requesting that you review this case. If your decision is to still not file this matter, we ask that you contact my office in hopes that Mr. Kay, his attorney and our office can meet with you to further discuss this situation so that we can do what is necessary to insure that this case is heard before a judge or jury.

On behalf of Mr. Kay, I thank you for your prompt attention to this letter.

Sincerely,

Howard Leader
President

CC: Deputy City Attorney Elizabeth Gertz
Detective Ron Marino, Wilshire Division
Detective Martinez, Wilshire Division
Burton C. Jacobson, Attorney for James Kay

EXHIBIT RL-1

12/20

**Statement of Richard W. Lewis to the
Federal Communications Commission**

I, Richard W. Lewis, make the following statement under oath in connection with an official proceeding before the Federal Communications Commission.

I am presently the Transportation Manager for the Moreno Valley Unified School District. For ten years, from April 1983 through April 1993, I was the Transportation Manager for the Fullerton Elementary School District. In 1982 the Director of Transportation, Jerry Hart, purchased a radio system for the Fullerton Elementary School District and obtained an FCC license.

Beginning in January 1992, right after we came back from Christmas vacation, we experienced problems in the radio system that we didn't have before school vacation began. We were picking up signals from a company called Hyster, who kept breaking into our service. We contacted Bob Moriarity of Advance Electronics who told us it was a problem with Motorola, who provided our repeater service. Motorola was undergoing a reshuffling at the time, though, and couldn't help us solve the problem.

About two or three weeks after the interference had begun, Don Kirk, an acquaintance who used to work for Motorola and who had since opened up Newport Radio, showed up. He sold us some radios at good prices, and I asked him if he could help with the interference problem. He said he would look into it. He later got back to us and told me that the frequency we were on was good for a 75 mile radius but that Hyster had more power than we did

and was overriding us. I asked Kirk how we could fix the problem and he said he knew someone who could help us. Then, about a week or ten days later, I got a call from James Kay who said the same things Kirk had told us and said he could take care of the problem. Mr. Kay said that he and Don Kirk owned a repeater we could use but that we would have to change our license to switch from Majesta Peak to his peak. Don Kirk then set it up so we would use their repeater for one year.

The paperwork for the service was handled by a woman named Agnes Pennington. I signed the repeater agreement and later got a new license in the mail. I didn't look at it at the time, but merely put it in the file without noticing that it had been changed from a GP (special emergency) license to a GB (conventional business) license. I know that when I signed up for the new repeater service I never intended to change the FCC license, and I never authorized Ms. Pennington or Don Kirk to make the change. I did sign the application that switched us from a licensee to an end user, but I didn't realize the consequences of what I had signed. I had only intended to move the repeater service from one peak to another to clear up the interference problem, and Don Kirk told me that it wouldn't effect the license.

Sometime later, I was called by James Kay who sounded very agitated. He said that Don Kirk was not forwarding him the money we were paying for repeater service and that he didn't want to do it to us but he was going to shut down the service. I asked Mr.

Kay if we could deal directly with him, and he said that would be no problem. When I contacted Kirk, he said that he had been having some financial problems and that he had been using our money for other purposes. Later, Kirk did forward the money to James Kay.

I have read the foregoing statement consisting of 3 pages. I have made any corrections and I have initialed each page at the top and the bottom. I have been permitted to add any information I believe is necessary, and by signing it I swear under penalty of perjury before a duly licensed notary public that this statement is true and accurate to the best of my knowledge and belief.

signed by:

Richard W Lewis

Date.

2/16/95

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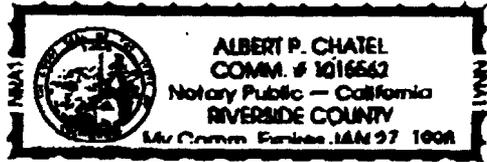
No. 5907

State of CALIFORNIA

County of RIVERSIDE

On 2-16-95 before me, ALBERT P. CHATEL Notary Public
personally appeared RICHARD W. LEWIS
NAME(S) OF SIGNER(S)

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal
Albert P. Chatel
SIGNATURE OF NOTARY

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EXHIBIT RL-2

In The Matter Of:

*James A. Kay, Jr. v.
Edward Alan Cooper*

*Richard W. Lewis
November 7, 1996*

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

Original File 963029c, 66 Pages

Word Index included with this Min-U-Script®

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE JAMES A. KAY, JR.,) Plaintiff,) vs.) No. 763 538 EDWARD ALAN COOPER, an) Individual; and DOES 1) through 25, Inclusive,) Defendants.) DEPOSITION OF RICHARD WILLIAM LEWIS Beverly Hills, California November 7, 1996 LORI SCINTA, RPR CSR #4811 JOB NO. 963029C

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE JAMES A. KAY, JR.,) Plaintiff,) vs.) No. 763 538 EDWARD ALAN COOPER, an) Individual; and DOES 1) through 25, Inclusive,) Defendants.) Deposition of RICHARD WILLIAM LEWIS, taken on behalf of Plaintiff at 424 South Beverly Boulevard, Beverly Hills, California, commencing at 2:05 P.M., Thursday, November 7, 1996, before Lori Scinta, RPR, CSR #4811, pursuant to Subpena.

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APPEARANCES :

FOR PLAINTIFF: CRAWFORD & CRAWFORD BY: WILLIAM CRAWFORD, ESQ. 424 South Beverly Boulevard Beverly Hills, California 90212-4144 (310) 553-8533

FOR DEFENDANT COOPER: PARKER, COVERT & CHIDESTER BY: JOHN E. HAYASHIDA, ESQ. 17862 East Seventeenth Street Suite 204 Tustin, California 92780 (714) 573-0900

ALSO PRESENT: JAMES A. KAY, JR.

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WITNESS: RICHARD WILLIAM LEWIS Page Examination by Mr. Crawford 6

UNANSWERED QUESTIONS:

(None)

INFORMATION TO BE INSERTED:

(None)

EXHIBITS:

Table with 3 columns: Plaintiff's Description, Page. Row 1: Two-page document consisting of a letter from James Kay, Jr. to Rick Lewis and a photocopy of a radio license application, 23. Row 2: Photocopy of the Repeater Agreement, 30. Row 3: Letter from James Kay, Jr. to Rick Lewis dated 07/07/92, 32.

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EXHIBITS: (Continued)

Table with 3 columns: Plaintiff's Description, Page. Row 4: Letter from Rick Lewis to Ron Fuhrman dated July 8, 1992, 32. Row 5: Letter from Rick Lewis to Jay Shed dated July 16, 1992, 36. Row 6: Document entitled "Statement of Richard W. Lewis to the Federal Communications Commission", 53. Row 7: Document entitled "National Association of Business and Educational Radio Frequency Recommendation Notice", 57. Row 8: Letter from Agnes Pennington to Rick Lewis dated August 21, 1991, 61.

(1) RICHARD WILLIAM LEWIS, (2) having been first duly sworn, was (3) examined and testified as follows:

(5) EXAMINATION

(6) BY MR. CRAWFORD:

(7) Q: Good afternoon, Mr. Lewis. Would you (8) please state your name and spell it for the record.

(9) A: It's Richard William Lewis. (10) R-i-c-h-a-r-d, W-i-l-l-i-a-m, L-e-w-i-s.

(11) Q: Have you ever had your deposition taken (12) before?

(13) A: Yes, once before.

(14) Q: Approximately how long ago was that?

(15) A: Approximately seven years ago.

(16) Q: We'll go over just briefly some of the (17) formalities of a deposition.

(18) The court reporter has just given you an (19) oath and that is an oath to tell the truth. It (20) carries with it the same full force and effect as if (21) you were testifying in a court of law before a judge (22) and a jury.

(23) Do you understand that?

(24) A: Yes.

(25) Q: Have you had any drugs or alcoholic

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(1) beverages within the last 24 hours?

(2) A: No.

(3) Q: Okay. Have you had any traumatic events, (4) in your life or illnesses or anything else in your (5) recent past that you think would impair your ability (6) to give your best testimony today?

(7) A: No.

(8) Q: So as far as you know, then, you can give (9) us your best testimony today; is that correct?

(10) A: That's correct.

(11) Q: One of the things about a deposition that (12) sets it apart from other communication proceedings is (13) that it is a lot more like being on radio than is like (14) being on television. If I say, "It is about this (15) big," when you read the record, we have no idea how (16) big that is. Gestures don't come out clearly on the (17) record. Guttural responses such as "uh-huh,"

(18) "huh-uh," "um-hum," so forth and so on, also don't (19) come out clear. So I will ask you to answer "yes" or (20) "no," to yes and no questions.

(21) Our normal communication patterns are (22) different than that. At some time or another I may (23) prompt you with, is that a "yes" or a "no"? Please (24) don't be insulted. Everybody makes that mis-

take, and (25) it is just for purposes of record clarity.

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(1) And, further along the lines of a clear (2) record, if I ask you a question that you don't (3) understand, please don't answer it and ask for (4) clarification, because I am going to assume that if (5) you answer my question that you understood it.

(6) Also, please wait until I have completely (7) finished the question before you speak your answer. (8) It does two things. It keeps the court reporter (9) having to take down two people talking at once, which (10) is very difficult to do, and it gives your counsel an (11) opportunity to digest the question before you answer (12) it, as well.

(13) From time to time, I may ask you for an (14) estimate, time, perhaps distance or something along (15) those lines. You may not know the exact answer to the (16) question. I am entitled, however, to an estimate if (17) you can give an estimate. An estimate is based upon (18) something that you know, not a guess and not (19) speculation. We don't want you to guess or speculate.

(20) Do you have any questions about that?

(21) A: No.

(22) Q: All right, sir. When did you begin (23) working for the Fullerton School District?

(24) A: I began working in April of 1983.

(25) Q: What was your position at that time, sir?

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(1) A: Director of transportation.

(2) Q: You completed high school?

(3) A: Yes.

(4) Q: After that did you have any further (5) education?

(6) A: Two years of college.

(7) Q: Where was that?

(8) A: At Santa Ana College.

(9) Q: Did you graduate with any particular (10) degree from there?

(11) A: No.

(12) Q: Anything subsequent to that as far as (13) formal education is concerned?

(14) A: Continuation classes at California State (15) University of Fullerton in School Business Management, (16) certificate program.

(17) Q: Anything beyond that?

(18) A: No.

(19) Q: Have you ever formally studied in any of (20) these schools radios or FCC regulations or anything (21) else along those lines?

[22] A: No.
[23] Q: Have you ever studied electronics at all?
[24] A: No.
[25] Q: What was the status of the two-way radio

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[1] situation when you began as Director of Transportation [2] at the Fullerton School District in 1983?

[3] A: It was purchased prior to my approval and [4] had already been in service for approximately one [5] year, I believe.

[6] Q: Do you know who the service provider was?

[7] A: In 1983, no, I do not.

[8] Q: Do you know who the provider of service [9] was — strike that.

[10] Did you at some point in time become [11] aware of who was providing radio service for the [12] Fullerton School District?

[13] A: We — at that time, I believe it was [14] MaComCo was doing maintenance repairs and had a [15] maintenance agreement with them.

[16] Q: Do you know who was providing that [17] repeater service at that particular point in time?

[18] A: Any repeater service we had was done [19] through MaComCo. I believe it was Motorola.

[20] Q: At what point in time did you first [21] become involved with either MaComCo or Motorola or, [22] for that matter, any other radio-related service, or [23] equipment repair providers?

[24] A: I don't understand the question.

[25] Q: Okay. At some point in time did you

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[1] become involved in the business negotiations for radio [2] either repair or service?

[3] A: I still don't understand. We had [4] maintenance agreements with MaComCo and that was in [5] force when I came there.

[6] Q: It was in force, and was it in force [7] continuously until you left?

[8] A: As far as the maintenance on the radios, [9] MaComCo I believe was still doing the maintenance [10] agreement on it.

[11] Q: So did you ever enter into any [12] negotiations with MaComCo related to radio service [13] other than to just renew the contract?

[14] A: We discussed prices on a yearly basis [15] with them and then renewed the contract based upon [16] what the

prices were going to be for the following [17] year.

[18] Q: Was that part of your job [19] responsibilities as the Director of Transportation?

[20] A: Yes, to establish the budget for the next [21] year.

[22] (Discussion off the record.)

[23] BY MR. CRAWFORD:

[24] Q: Was there anything remarkable that you [25] can think of about the radios up until, say, 1990?

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[1] MR. HAYASHIDA: I'm going to object. That is [2] vague as to what is "remarkable."

[3] MR. CRAWFORD: It is very vague.

[4] MR. HAYASHIDA: So it is pretty open-ended.

[5] MR. CRAWFORD: It is very open-ended.

[6] Q: Was your radio service perfect until [7] 1989?

[8] A: Yes.

[9] Q: Perfect? Absolutely perfect?

[10] A: Had no problems with it.

[11] Q: Okay. Was it perfect through 1990?

[12] A: As far as I can remember, yes.

[13] Q: Who was on the air in 1990?

[14] MR. HAYASHIDA: I'm going to object. I don't [15] think I understand the question as to — what do you [16] mean by "who was on the air"?

[17] BY MR. CRAWFORD:

[18] Q: On the radio station used by the school [19] district, was there anybody on the air besides the [20] school district?

[21] A: Another party?

[22] Q: Yes.

[23] A: Yes, there was.

[24] Q: Who was that?

[25] A: There was a veterinarian firm out of

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[1] Corona, I think it was.

[2] Q: Does the name "Steppe" ring a bell?

[3] A: Dr. Steppe, yes.

[4] Q: Did you talk to Dr. Steppe?

[5] A: No, I have not.

[6] Q: Is that the way his last name is [7] pronounced, "Steppe"?

[8] A: As far as I am aware, that's the way it [9] is pronounced, yes.

[10] Q: I'll stick with that today. As far as I [11] know, it is spelled S-t-e-p-p-e.

[12] Is that correct, as far as you know?

[13] A: As far as I know. You know the spelling [14] better than I do.

[15] MR. HAYASHIDA: For the record, the witness is [16] pronouncing it as if it were spelled "s-t-e-p."

[17] MR. CRAWFORD: Correct.

[18] Q: Do you know what frequency the school was [19] operating on in 1990?

[20] A: I don't remember at this time.

[21] Q: At some point in time you did know, [22] correct?

[23] A: (No audible response.)

[24] Q: Is that a "yes"?

[25] A: Yes.

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[1] Q: Do you know what the FCC coordination [2] rules were for that particular frequency in that [3] particular area in 1990?

[4] A: No, I do not.

[5] Q: I'm going to use the word "problem" very [6] loosely here. It means anything that you didn't like.

[7] When did you first have problems with [8] radio service, if you ever had any?

[9] A: It was right around January 1992 after [10] Christmas vacation.

[11] Q: What was the nature of that, sir?

[12] A: We were getting interference, other [13] people on it, this type of thing.

[14] Q: Okay. Were you aware of any changes in [15] either the coordination rules or the interpretation [16] rules at the FCC that caused to be — rather, [17] additional people to be placed on the air with you?

[18] A: No.

[19] Q: I'd like to differentiate matters such as [20] co-channel traffic from interference. Co-channel [21] traffic are users that are operating lawfully [22] alongside other users on a given frequency, and [23] interference would be abnormal either noise or [24] transmissions from unauthorized individuals on that [25] frequency. That's the way I am using them today.

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[1] What I would like to ask you now is: [2] Aside from co-channel traffic, could you describe the [3] nature of the interference on the channel?

[4] A: To the best of my recollection, it was a [5] sporadic, unable to transmit between the — our base [6] station out to the units in the field, not [7] understanding like somebody was cutting us off, not [8] able to get full transmission.

[9] Q: Okay.

[10] MR. HAYASHIDA: Let me just interpose an [11] objection. I don't know if the foundation has been [12] laid as to whether or not this witness actually heard [13] interference.

[14] MR. CRAWFORD: Okay.

[15] Q: Did you have any contact with the radio [16] equipment at all?

[17] A: It was in my office.

[18] Q: You had a monitor in your office?

[19] A: I had a — not in my office. There were [20] monitors out in the dispatch area, which is upstairs [21] in the same office complex.

[22] Q: So as far as listening to what was going [23] on on the radio at the Fullerton School District, was [24] this something you did on a regular basis or an [25] occasional basis, or just could you describe it for

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[1] me?

[2] A: I did it on a daily basis.

[3] Q: How did that occur?

[4] A: Both by — I had a hand-held radio that [5] was at my discretion and also in the district car was [6] a mobile.

[7] Q: In the district car?

[8] A: Yes.

[9] Q: So you were driving a district vehicle at [10] that time?

[11] A: District vehicle with a radio in it, yes.

[12] Q: So you actually did hear the interference [13] that you have discussed with us, correct?

[14] A: Yes.

[15] Q: Did you come to know what the reasons for [16] it were at some point in time?

[17] A: Yes.

[18] Q: What were those reasons?

[19] A: We were told by another individual that [20] there was a — our frequency had been within only a [21] 75-mile radius and that it was — other people could [22] get on the frequency, and apparently this other [23] company was — had gotten on over Christmas vacation [24] and that they were at the time more powerful than us [25] and were able to transmit over our transmissions.

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[1] Q: Did you have any contact with any people [2] at that time in order to attempt to rectify the [3] situation?

[4] A: We attempted to contact Motorola and find [5] out when we — apparently when we first got back, we [6] attempted to contact Motorola to get some information [7] from Motorola.

[8] The best of my recollection, they were [9] going through a reorganization at that time and the [10] gentleman that we had been discussing with was no [11] longer part of the government part of the business [12] with Motorola.

[13] Approximately a month after that, a [14] gentleman by the name of Don Kirk

came in with Newport [15] Radio, who had been at one time with Motorola as far [16] as on the governmental end where I had known him at [17] that time.

[18] (Discussion off the record.)

[19] BY MR. CRAWFORD:

[20] Q: Can you recall who it was that explained [21] the 75-mile radius aspect

[22] A: I believe it was Don Kirk at that time [23] explained it to me.

[24] Q: Was this a situation in which Don Kirk [25] contacted you directly, or how did that meeting come

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[1] about?

[2] A: We had purchased some additional radios [3] through him for advanced — or increases into the [4] fleet. He was with Newport Radio at that time.

[5] We had asked him to give us some bids on [6] radios, and they came in at a lower price than what we [7] were getting through our other vendor. So we [8] purchased a number of radios from him.

[9] Q: So that he came in at a lower price than [10] MaComCo, right?

[11] A: Yes.

[12] Q: Did he offer you any kind of resolution [13] to this particular problem?

[14] A: Mr. Kirk had come in and I had — we were [15] having problems. If I remember right, the day that he [16] came in, I asked him if he was — could get some [17] information for me as to what the problem was.

[18] He had indicated that he would get back [19] to me within a period of time, and approximately two, [20] three weeks later, he did come back and explain that [21] because of the license we were on and the repeater, [22] the shared repeater that we were on, that there was [23] the possibility of other people coming in.

[24] Q: So he didn't lead you to believe, then, [25] that the additional users on the same channel that the

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[1] school district was on were there unlawfully?

[2] A: No, he did not.

[3] Q: Okay. What did he suggest to you should [4] be done to rectify the situation, if anything?

[5] A: He had indicated to me that he and [6] another — he had a repeater, that we could discuss [7] about changing our repeater but from I believe [8] Modjeska Peak at the time over to one on Santiago Peak [9] and change the — change our repeater because — [10] through the shared community repeater to one that he [11] had owned or that he had access

to and that may [12] correct the problem that we were having.

[13] Q: I'm sorry. I missed that. The move was [14] from Santiago to Modjeska?

[15] A: I think we were on Modjeska at the time [16] and was moving over to Santiago Peak over in the [17] Corona area.

[18] Q: Did you then make that particular move [19] with Mr. Kirk?

[20] A: After a period of time and discussions, [21] yes, we did make that move.

[22] Q: What did the move from Modjeska to [23] Santiago entail, from your perspective?

[24] A: From my perspective, it was Mr. Kirk had [25] indicated all we'd have to do is change our licensing

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[1] from having the repeater on Modjeska over to Santiago [2] Peak.

[3] Q: Did he discuss the nature of that change [4] with you any further than that?

[5] A: Just that we would have to change the [6] licensing from our repeater and change the [7] coordinators from Modjeska over to Santiago Peak.

[8] Q: Did he mention that you would be going [9] from a conventional to an SMR

[10] A: No, he did not.

[11] Q: Do you know what I'm talking about when I [12] say "conventional"?

[13] A: Vaguely, yes.

[14] Q: Let me take you back to when that [15] occurred, when these conversations with Don Kirk [16] occurred.

[17] A: When did they occur?

[18] Q: Right. Approximately. I'm just looking [19] for a year.

[20] A: Approximately '92, I would believe. [21] Or let me change that. Early '92, after [22] vacation.

[23] Q: So it was Don Kirk that indicated to you [24] that he owned a repeater; is that correct?

[25] A: He had indicated that he had access to a

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[1] repeater with another gentleman and that between the [2] two of them, they could initiate a move for us.

[3] Q: Did you then execute documents with him [4] to effectuate this move?

[5] A: Yes, we did.

[6] Q: And as far as you know, was the move [7] completed successfully?

[8] A: It was — the license was re — [9] re-changed from Modjeska to Santiago, yes.

[10] Q: Did he describe to you at all the nature [11] of the repeater that you would be using on Santiago in [12] terms of power?

[13] A: I don't remember.

[14] Q: Did he indicate to you whether it would [15] be more powerful or less powerful or the same as the [16] one you had before?

[17] A: I don't remember.

[18] (Discussion off the record.)

[19] BY MR. CRAWFORD:

[20] Q: After making this arrangement with [21] Mr. Kirk and signing the documents to effectuate the [22] move, did you at some point in time subsequent to that [23] receive a contact from James Kay?

[24] A: Yes.

[25] Q: Have you ever met James Kay in person?

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[1] A: No, I have not.

[2] Q: Okay. (Addressing Mr. Kay) James Kay, [3] Rick Lewis.

[4] What was the nature of that particular [5] telephone call, to the best of your recollection?

[6] A: Best of my recollection, I received a [7] phone call from Mr. Kay indicating that we were having [8] some difficulty with the licensing and that he was [9] going to send me a copy of a letter that I could redo [10] and put on district letterhead and mail back to the [11] FCC.

[12] Q: That was to allow the licensure change [13] from Modjeska to Santiago?

[14] A: That's correct.

[15] Q: What I would just like to do is go over a [16] few documents to see if you might, per chance, [17] recognize them and put this in to date perspective [18] here.

[19] Counsel, if you would like to have a look [20] at this. It is my understanding that these two are [21] related.

[22] Mr. Lewis, do you recognize those two [23] documents?

[24] A: Yes, I do.

[25] Q: Looking first at the application, do you

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[1] recognize your signature down at bottom of the [2] application?

[3] A: Yes, I do.

[4] Q: To the best of your recollection, does [5] the date to the right of your signature there at the [6] lower portion of the page reflect the time at which [7] you executed that particular document?

[8] A: Yes.

[9] MR. CRAWFORD: We can mark this as Exhibit 1.

[10] (Discussion off the record.)

[11] (Exhibit 1 was marked for [12] identification by the reporter [13] and attached hereto.)

[14] BY MR. CRAWFORD:

[15] Q: You also recognize the cover letter, [16] correct?

[17] A: Yes.

[18] MR. CRAWFORD: We'll mark the cover letter [19] Exhibit 1 to this deposition transcript. Note: To [20] not be confused, it has an "Exhibit 7" stamp on it [21] from a different deposition.

[22] Q: This letter indicates that this was [23] transmitted to you by James Kay based upon your [24] conversations with Don Kirk.

[25] Does that truly reflect the circumstances

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[1] of the transmission of this document to you?

[2] A: I don't understand the question.

[3] Q: In paragraph 1, it says, "Pursuant to [4] your conversations with Mr. Don Kirk of Newport Radio [5] this letter is to forward to you the FCC license [6] application for the Fullerton Elementary School [7] District to use a repeater located at Santiago Peak."

[8] A: Correct.

[9] Q: Was that the nature of your agreement [10] with Mr. Kirk?

[11] A: Yes, it was.

[12] Q: And the second paragraph indicates that [13] Mr. Kirk asked Mr. Kay to prepare and file the FCC [14] license application for Fullerton.

[15] Was that the nature of your understanding [16] with Mr. Kirk?

[17] A: Yes, it was.

[18] Q: At that point in time after receiving [19] these two documents, did you read the license [20] application and sign it at the bottom?

[21] A: I signed it at the bottom, yes.

[22] Q: Did you also make a copy of this document [23] for your files and place it in your files?

[24] A: I will say yes, Yes, I did.

[25] Q: Okay.

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[1] MR. HAYASHIDA: I'm going to instruct the [2] witness not to speculate or guess on his answers.

[3] THE WITNESS: Okay, I don't remember if I did.

[4] BY MR. CRAWFORD:

[5] Q: Okay. Would it have been your normal [6] business practice to make copies

of documents that you [7] signed to keep one for your file before sending them [8] on to someone else?

[9] A: Normal business practice is to keep [10] copies of everything, yes.

[11] Q: Of course.

[12] (Discussion off the record.)

[13] BY MR. CRAWFORD:

[14] Q: In looking at this application here, [15] Exhibit 1, the second page of it, which is the [16] application, does it appear to you that it has been [17] changed in any manner subsequent to your signature?

[18] A: No.

[19] Q: Did Don Kirk ever explain to you any of [20] the differences between conventional and SMR service?

[21] A: No, he did not.

[22] Q: Was it your understanding when you were [23] dealing with Mr. Kirk that he was doing this through [24] another gentleman and that gentleman was — strike [25] that.

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[1] As I understand from your testimony, you [2] understood that Mr. Kirk had a repeater available on [3] Santiago or was going to make one available through [4] another entity, though, correct?

[5] A: Through another individual.

[6] Q: Was it your understanding that James Kay [7] was that individual?

[8] A: Yes, it was.

[9] Q: Up until this point in time you had never [10] met with Mr. Kay; is that correct?

[11] A: That's correct.

[12] Q: Would it also be fair for me to say that [13] this was, in fact, your first contact of any sort with [14] Mr. Kay, as far as you know?

[15] A: For this?

[16] Q: Yes, this letter.

[17] A: My first contact with Mr. Kay?

[18] Q: Oh, wait. That was the telephone call, [19] is that correct, or not?

[20] A: No. The first contact with Mr. Kay was [21] this here.

[22] Q: Was the Exhibit 1?

[23] A: Yes.

[24] Q: Okay.

[25] (Discussion off the record.)

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[1] BY MR. CRAWFORD:

[2] Q: Do you recall at all Mr. Kay contacting [3] you before this by telephone and asking you any of the [4] details of your business operation in order to fill [5] out this form?

[6] A: He may have. I don't remember.

[7] Q: All right. We'll set that aside for now [8] as Exhibit 1, and I will show you another document, [9] sir, which is entitled "Repeater Agreement," which is [10] dated at the bottom — strike that.

[11] Do you recognize your signature down at [12] the bottom the page?

[13] A: Yes, I do.

[14] Q: All right. It is a two-page document and [15] it is dated "6/18/92." Is that also in your hand?

[16] A: Yes, sir, it is.

[17] Q: This appears to be an agreement between [18] the Fullerton School District and Newport [19] Communications, if I understand it correctly. I'm [20] sorry. Newport Radio. Newport Radio Communications.

[21] Is that your understanding of the [22] agreement?

[23] A: Is that my understanding of the [24] agreement?

[25] Q: Yes, sir.

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[1] A: Yes.

[2] Q: Up at the top it indicates that the [3] station description is an SMR base station.

[4] With regard to that station description, [5] SMR base station, did Mr. Kirk tell you what an SMR [6] base station was?

[7] A: No, he did not.

[8] Q: Did Mr. Kirk describe to you at all the [9] changing nature of the radio industry away from [10] conventional operation to SMR and ultimately [11] trunked-type operation as a business trend in the [12] two-way radio field?

[13] A: Not to my recollection.

[14] Q: Did you read and understand this [15] particular agreement, repeater agreement?

[16] A: I would say that I did not read the full [17] agreement. I glanced at it to make sure that it was [18] correct with what Mr. Kirk and I discussed.

[19] Q: Did the school district have someone that [20] normally reviewed contracts for them to alleviate the [21] burden of reading through all the legal mumbo-jumbo [22] from people such as yourself?

[23] A: Yes, they did.

[24] Q: Who was that?

[25] A: It was the attorney firm that was with

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[1] the district at the time.

[2] Q: Did they get a copy of this particular [3] agreement, to your knowledge?

[4] A: I do not know that. The copy was sent up [5] to our assistant superintendent of business services.

[6] Q: I see. As far as you knew, that was the [7] extent of your responsibility, to pass it on to anyone [8] else?

[9] A: That's correct.

[10] Q: And from there it would go on to legal, [11] if that person so believed that it should?

[12] A: That's correct.

[13] Q: I know there is a lot here to try to [14] remember. I'm just going to ask this question.

[15] Does anything on this repeater agreement [16] not appear to you to be the way it was when you signed [17] it?

[18] A: To the best of my recollection, no.

[19] Q: To your knowledge, is there anything in [20] this repeater agreement that is at variance, and I [21] realize you may not have read the whole thing, but [22] anything here that is at variance from your oral [23] agreement that you had with Don Kirk?

[24] A: I don't remember.

[25] MR. CRAWFORD: Okay. We can have this marked

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[1] as next in order. It is two pages in length, Exhibit [2] No. 2.

[3] (Exhibit 2 was marked for [4] identification by the reporter [5] and attached hereto.)

[6] BY MR. CRAWFORD:

[7] Q: Subsequent to the execution of this [8] repeater agreement and perhaps some time in July, [9] maybe even July 7th, do you recall receiving a [10] telephone call from someone at the Federal [11] Communications Commission asking you if you wanted to [12] make these changes?

[13] A: I don't remember.

[14] Q: When is the first time that you remember [15] speaking to anyone at the Federal Communications [16] Commission? And that's obviously with regard to [17] Fullerton School District business.

[18] A: It would have been 1994, I believe. I [19] may be wrong on the date.

[20] Q: All right. I am going to hand you [21] another document here. This purports to be a letter [22] from Mr. Kay to you, dated July 7th, 1992.

[23] Please take a moment to review that and [24] see if that reminds you of anything.

[25] A: That was in follow up to a conversation I

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[1] had with Mr. Kay indicating that there was maybe some [2] problems with the changing of the licensing and it [3] asked me to follow up with a letter that he had [4] drafted and put on district letterhead.

[5] Q: How did you come to know that there were [6] some problems with the FCC licensing?

[7] A: Just from Mr. Kay.

[8] Q: I notice in here it mentions a review by [9] the FCC.

[10] Can you recall whether you ever saw any [11] documents regarding this FCC review of any sort?

[12] A: No.

[13] Q: At that point in time, did Mr. Kay [14] forward to you a suggested letter?

[15] A: Yes.

[16] Q: Okay.

[17] A: Which, I believe, was attached with that [18] there.

[19] Q: Oh. That was attached to the —

[20] A: To this here, I believe (indicating).

[21] (Discussion off the record.)

[22] MR. CRAWFORD: Why don't we mark this as the [23] next in order, then. It is the letter from Mr. Kay to [24] Mr. Lewis dated July 7, 1992, as the next in order, [25] Exhibit 3.

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[1] (Exhibit 3 was marked for [2] identification by the reporter [3] and attached hereto.)

[4] BY MR. CRAWFORD:

[5] Q: Now we will just reference Exhibit 4 as a [6] letter dated July 8, 1992 to Mr. Ron Fuhrman from [7] Mr. Lewis.

[8] As I understand it, sir, this letter [9] follows very closely to the suggested one that you [10] received from Mr. Kay. Is that correct?

[11] A: That's correct.

[12] Q: Do you recall making any changes in [13] substance at all between the one Mr. Kay sent you?

[14] A: No, I do not.

[15] (Exhibit 4 was marked for [16] identification by the reporter [17] and attached hereto.)

[18] BY MR. CRAWFORD:

[19] Q: With respect to the first paragraph, [20] which begins — not really the first paragraph. It is [21] the first inset paragraph, which is really the second [22] paragraph. It begins, "The Fullerton School District [23] desires to obtain repeater service..."

[24] Is there anything that is incorrect about [25] that particular paragraph?

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[1] MR. HAYASHIDA: I'm just going to object. What [2] do you mean by "incorrect?" In that it does not [3] follow the suggested letter from Mr. Kay or —

[4] MR. CRAWFORD: No, in that it doesn't follow [5] the agreement with Mr. Kirk as Mr. Lewis understood [6] it.

[7] THE WITNESS: I don't understand the question.

[8] BY MR. CRAWFORD:

[9] Q: Okay. Maybe if I break it down a little [10] bit.

[11] The first part, "The Fullerton School [12] District desires to obtain repeater service from a [13] repeater provided by Mr. James A. Kay, Jr."

[14] With regard to that statement, was that [15] your understanding from Mr. Kirk and —

[16] A: Yes.

[17] Q: — and was this a decision that you were [18] making on behalf of the Fullerton School District?

[19] A: Yes.

[20] Q: You also understood that the location of [21] the repeater was to be at Santiago Peak near Corona, [22] California; is that true?

[23] A: That's correct.

[24] Q: Then it refers to the application pending [25] under a certain file number.

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[1] Was that something that you knew on your [2] own or you just relied on Mr. Kay to make sure that [3] the file number was accurate?

[4] A: I relied on Mr. Kay to make sure the file [5] number was accurate.

[6] Q: The second paragraph, the first sentence, [7] states that:

[8] "The Fullerton School District is [9] aware of and has a copy of the [10] Federal Communications Commission [11] rule sections 90.127(C)(1) and [12] 90.127(C) (2)."

[13] Did the Fullerton School District [14] maintain copies of the FCC rules?

[15] A: There were rules there in the office, [16] yes.

[17] Q: Right. It is my understanding that is an [18] FCC requirement for at least conventional users in [19] those days, was to maintain a copy of the FCC rules.

[20] Was that your understanding, as well?

[21] A: Yes.

[22] Q: I will hand you another document. It is [23] a letter dated July 16, 1992 to Mr. Jay Shed from [24] Mr. Lewis. Would you please take a moment to review [25] that letter there, sir.

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[1] Is that a document you recognize, sir?

[2] A: Yes.

[3] Q: Could you tell me the circumstances that [4] caused you to generate this particular letter?

[5] A: This was to inform Motorola that we were [6] disconnecting from the shared repeater service [7] effective July 1, '92 — July 31, '92.

[8] Q: Essentially, what you were doing or I [9] believe this letter was doing is terminating service [10] with Motorola.

[11] Is that correct, or —

[12] A: Terminating repeater service with [13] Motorola, correct.

[14] Q: Okay. That was because you were then [15] going to be receiving repeater service from Mr. Kay, [16] correct?

[17] A: That's correct.

[18] Q: Did Motorola offer to do anything for you [19] at all in terms of either boosting the power to the [20] repeater, putting you on a better repeater, any type [21] of service improvements at all?

[22] A: I don't remember any communication with [23] Motorola.

[24] MR. HAYASHIDA: Same letter.

[25] THE WITNESS: Same letter.

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[1] MR. CRAWFORD: Oh, thanks. Why don't we mark [2] this as an exhibit, then, the next exhibit to be [3] Exhibit 5.

[4] (Exhibit 5 was marked for [5] identification by the reporter [6] and attached hereto.)

[7] BY MR. CRAWFORD:

[8] Q: When was it that you left the Fullerton [9] School District?

[10] A: April of 1993.

[11] Q: Can you recall the particular day?

[12] A: No. It was April of '93.

[13] Q: Some time in April?

[14] A: First week in April.

[15] Q: Did your departure from the Fullerton [16] School District have anything to do with this radio [17] business?

[18] A: No, it did not.

[19] Q: Up until that first week of April when [20] you departed from the Fullerton School District, were [21] you dissatisfied with the repeater service that you [22] were receiving through Don Kirk and from Mr. Kay up [23] until that point in time?

[24] A: The best of my recollection, we were [25] still having some problems with Hyster and other

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[1] people on the system, which we had had discussions [2] with Mr. Kirk.

[3] Q: Did you have any problems as far as your [4] satisfaction with the agreement was concerned prior to [5] your departure in 1993?

[6] A: I don't understand the question.

[7] Q: Did you have any problems with either the [8] repeater agreement or your

agreement with Mr. Kirk at [9] Newport, either of those two items, prior to your [10] departure?

[11] A: No.

[12] Q: If I understand it correctly, you were [13] being provided with repeater service at reasonable [14] rates. Correct me if I'm wrong.

[15] A: Competitive rates, yes.

[16] Q: Competitive. And this was something that [17] you had checked into; isn't that —

[18] A: That's correct.

[19] Q: Okay. When you left in April of 1993, [20] did you take any of the documents with you with regard [21] to any of the radio-related transactions?

[22] A: No, I did not.

[23] Q: I am assuming, of course, that you [24] received a copy of the subpoena and the attachment 3 to [25] it requesting documents.

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[1] A: Yes.

[2] Q: Did you bring any documents with you [3] today?

[4] MR. HAYASHIDA: I have one document.

[5] MR. CRAWFORD: I'll tell you what. Do you mind [6] if I make a copy of this quickly so I can read it and [7] you can read it and we don't waste a bunch of time [8] passing it around?

[9] MR. HAYASHIDA: Sure.

[10] (Recess taken.)

[11] MR. CRAWFORD: We can go back on the record [12] here.

[13] Q: I'm going to be very careful not to step [14] on any attorney-client privilege, okay?

[15] To the extent that you had any [16] communications with your attorney, I'm sure he has [17] advised you that that is attorney-client privileged. [18] But I'm going to ask you some questions that could, in [19] theory, tread on the attorney-client privilege, so I [20] wanted to say that in advance. If it does, clear it [21] with your counsel before answering it.

[22] Did you make this statement at the [23] direction of any particular person, other than your [24] attorneys?

[25] A: Yes.

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[1] Q: Who was that?

[2] A: Through the FCC, Federal Communications [3] Commission.

[4] Q: Did somebody come out and visit you?

[5] A: Yes.

[6] Q: Who was that?

[7] **A:** I believe the name is Mr. Hollingsworth [8] with the Federal Communications Commission.

[9] **Q:** One of the things that just has me a [10] little confused here, it indicates in here that the [11] license that the Fullerton School District had was a [12] GB license.

[13] (Discussion off the record.)

[14] **MR. CRAWFORD:** Yes. On page 2, paragraph 2, it [15] indicates that you put it in the file without noticing [16] that it had been changed from a GP, special emergency [17] license, to a GB, conventional business license.

[18] Where did you get that particular piece [19] of information?

[20] **A:** That was during the discussion with [21] Mr. Hollingsworth.

[22] **Q:** Did he ever show you any documents to [23] substantiate the fact that it had been a GP, as in [24] Paul, license before?

[25] **A:** Not to my recollection.

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[1] **MR. CRAWFORD:** I will admit I'm somewhat [2] confused here because it's my understanding that it [3] had to be an emergency service to have one and the [4] school district doesn't qualify as an emergency [5] service. And it is also my understanding that the [6] license was a GB and was never a GP, as in Paul.

[7] Okay. Can you shed any light on that, [8] though, as far as the nature of the license being an [9] emergency or a business class?

[10] **A:** No.

[11] (Discussion off the record.)

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

[13] **Q:** Perhaps before we go through this [14] declaration in much more detail, I will ask you now: [15] Is everything in this declaration true and correct? [16] Strike that.

[17] At the time that you signed this [18] particular document, was everything in it true and [19] correct, to the best of your knowledge?

[20] **A:** Yes.

[21] **Q:** Since that particular point in time, [22] aside from what you have learned from me or anything [23] that I have said today, and I don't mean to imply you [24] have learned anything from me today, aside from [25] anything you have heard in this room today, between

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[1] the time you signed this declaration and the present, [2] did you learn anything that would lead you to believe [3] that anything in here was not true and correct?

[4] **A:** No.

[5] **Q:** In paragraph 2, I will quote the relevant [6] line:

[7] "We were picking up signals from a [8] company called Hystra, who kept [9] breaking into our service." [10] With regard to that statement, did [11] anyone — and, once again, when I say "anyone," I'm [12] talking about anyone other than your attorneys — did [13] anyone tell you that there was anything improper about [14] the operation of the radio transmissions from Hyster [15] aside from the fact that they were annoying to you?

[16] **A:** No.

[17] **Q:** So no one at the FCC told you that Hyster [18] was operating or anybody that had control of Hystra's [19] radios was operating illegally, did they?

[20] **A:** Not to my recollection.

[21] **Q:** When you contacted Bob Moriarity of [22] Advance Electronics, he said that it was a problem [23] with Motorola.

[24] Can you describe in any more detail the [25] problem with Motorola?

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[1] **A:** I don't understand.

[2] **Q:** Did he mention to you, for instance, that [3] it was a weak repeater, one of the older ones?

[4] **A:** No, he did not.

[5] **Q:** Did he tell you anything about the nature [6] of the problem with Motorola at all?

[7] **A:** No.

[8] **Q:** The next sentence indicates that, [9] "Motorola was undergoing a reshuffling at the time, [10] though, and couldn't help us solve the problem."

[11] Now, was that based upon your contacts [12] with Motorola or based upon information you received [13] from someone else who indicated they contacted [14] Motorola?

[15] **A:** No. That was based upon my trying to get [16] information from Motorola and could not get anybody to [17] respond.

[18] **Q:** Did the people at Motorola indicate to [19] you that they were discontinuing their conventional [20] service?

[21] **A:** No.

[22] **Q:** Did they give you any more clues as to [23] what they meant by a "reshuffling"?

[24] **A:** Just a staff reshuffling and that there [25] was nobody in our area to basically contact.

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[1] (Discussion off the record.)

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

[3] **Q:** Next line, "About two or three weeks [4] after the interference had begun, Don Kirk, an [5] acquaintance

who used to work for Motorola and who had [6] since opened up Newport Radio, showed up."

[7] I'm interested just in how it was that he [8] showed up. That was because you had contacted him [9] with regard to purchasing radios?

[10] **A:** We had purchased radios prior to this [11] happening, and he had a habit of just dropping in, as [12] a salesman does.

[13] **Q:** Okay. So he essentially made a personal [14] call?

[15] **A:** A courtesy visit, if you would say.

[16] **Q:** Okay. Made a courtesy visit to your [17] location. And in the process of that visit, you [18] indicated to him that you had some radio trouble and [19] he said he would look into it?

[20] **A:** Correct.

[21] **Q:** Then he indicated to you at that point in [22] time he thought he knew someone who could help you [23] with your problem. And, to that extent, did you [24] understand that to mean that someone could give you a [25] better repeater service?

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[1] **A:** Not at that time, no.

[2] **Q:** Okay. But then it indicates that you got [3] a call from James Kay thereafter.

[4] Now, had you executed an agreement with [5] Mr. Kirk prior to the call from James Kay?

[6] **A:** No.

[7] **Q:** So, then, if I understand it, was this [8] particular call from James Kay the first contact that [9] you had with him?

[10] **A:** Yes, it is.

[11] **Q:** Can you recall approximately when that [12] was?

[13] **A:** It was just shortly after we returned [14] back from the vacation in '92.

[15] **Q:** The next sentence that I would like to [16] address is the one that relates to Mr. Kirk setting it [17] up so that the school district could use what I am [18] assuming is the "Kirk-and-Kay" repeater for one year.

[19] It is my understanding that that was a [20] seven-year contract rather than a one-year agreement.

[21] Would you be able to comment on that?

[22] **A:** Well —

[23] **MR. HAYASHIDA:** Why don't you just ask the [24] question instead of asking him for a comment.

[25] **MR. CRAWFORD:** Okay.

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[1] **Q:** Is it true that Mr. Kirk set it up so [2] that you could use their repeater for one year?

[3] A: We set up — excuse me. We set up the [4] open purchase order for one year, and it's done on a [5] year-to-year basis.

[6] (Discussion off the record.)

[7] BY MR. CRAWFORD:

[8] Q: Going back to that repeater agreement and [9] having a look at paragraph X with regard to the term [10] of the agreement, it seems to indicate that the [11] repeater agreement was five years. So I would like to [12] clarify the difference there.

[13] Which agreement were you speaking of only [14] relates to service for one year?

[15] A: That was the payment agreement we had [16] with Don Kirk, that was for a one-year period.

[17] Q: But that was an agreement for repeater [18] service, or was that something other than the repeater [19] agreement?

[20] A: The agreement we had with Mr. Kirk [21] through Newport Radio was for a payment of one year [22] for I believe it was \$450 a month times 12 months. [23] And that was an open P.O. that we had with him, which [24] is renewable on a yearly basis.

[25] Q: How does that differ, if at all, from

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[1] this repeater agreement here? I notice it has a [2] monthly rate of \$450. Were these two separate [3] contracts that you were paying \$450 a month on?

[4] A: No.

[5] Q: Is there a document that I am missing [6] here? Evidently, there is.

[7] Can you recall the title of that [8] particular document that you are referring to at all, [9] your open-ended — what was it?

[10] A: It was a purchase order.

[11] Q: Okay, purchase order. Great. So there [12] is a purchase order floating around —

[13] A: We can —

[14] Q: Go ahead.

[15] A: We can only do purchase orders from July [16] 1 through June 30th, and we can only appropriate money [17] on a year-to-year basis. So the agreement that I'm [18] talking about here is a purchase order from Kirk [19] through Newport Radio for a one-year agreement to pay [20] him, and then we renew the — reissue the purchase [21] order prior to July 1 for the next fiscal year.

[22] Q: Oh, I see. I understand it. It is [23] essentially something that comes up in the —

[24] A: You can't budget anything for more than [25] one year for the school district.

[1] Q: But from time to time it becomes [2] necessary to enter into contracts that are longer than [3] that?

[4] A: You can enter into a five-year contract [5] but actually budget them on a year-to-year basis.

[6] Q: Now, if I understand this next sentence [7] correctly, Agnes Pennington took care of the paperwork [8] for the repeater service; is that correct?

[9] A: Yes.

[10] Q: Did you have any discussions with Agnes [11] Pennington about the nature of the changes that were [12] occurring?

[13] A: No, I did not discuss anything with her.

[14] Q: Were you the person that dealt with her [15] directly or was there an intermediary?

[16] A: Mr. Kirk.

[17] (Discussion off the record.)

[18] BY MR. CRAWFORD:

[19] Q: I'm going to refer you back to Exhibit 1, [20] page 2. And in the lower left here, it describes the [21] person I think it says completing the application [22] terms. And it seems to indicate that that was Mr. Kay [23] that completed this.

[24] What I'm trying to understand here is [25] what it was exactly that Agnes Pennington prepared,

[1] since this seems to indicate that Mr. Kay prepared the [2] application for the license.

[3] A: I don't remember.

[4] (Discussion off the record.)

[5] BY MR. CRAWFORD:

[6] Q: I would like to ask you a question about [7] the language and the wording of this particular [8] agreement.

[9] Is this something that you did [10] exclusively on your own and wrote out, or did someone [11] else help you write out the wording?

[12] A: This was — I — it was done through [13] conversations with the FCC.

[14] Q: Can you recall approximately how many [15] people at the FCC you talked to?

[16] A: I believe two.

[17] Q: One was Mr. Hollingsworth?

[18] A: Yes.

[19] Q: And the other was?

[20] A: I have no recollection of the name.

[21] Q: Annmarie Wypijewski, perhaps?

[22] A: No. It was a gentleman.

[23] MR. KAY: William Kellett?

[24] BY MR. CRAWFORD:

[25] Q: William Kellett —

[1] A: Don't remember.

[2] Q: — doesn't ring a bell? [3] Did they write this out for you or type [4] it out for you?

[5] A: They typed it out and sent it to me at a [6] later date. I reviewed it and then mailed it back to [7] them with any corrections.

[8] Q: It indicates that you know or — strike [9] that. I'll just read the sentence.

[10] "I know that when I signed [11] up for the new repeater service I [12] never intended to change the FCC [13] license, and I never authorized [14] Ms. Pennington or Don Kirk to make [15] that change. [16] Were you aware at the time you made this [17] statement that in order to make a change from Modjeska [18] to Santiago that you would have to change the FCC [19] license?"

[20] A: I knew we'd have to change as far as [21] where the repeater is going to be and that they were [22] going to have to issue a new license based upon a [23] change in the repeater.

[24] (Discussion off the record.)

[25] BY MR. CRAWFORD:

[1] Q: All right. The next sentence:

[2] "I did sign the application [3] that switched us from a licensee [4] to an end user, but I didn't [5] realize the consequences of what I [6] had signed." [7] My question here is: What are the [8] consequences that you were concerned about at the time [9] you made this statement?

[10] A: What I — with discussion with the FCC, [11] what was brought to my attention was the license that [12] we originally had with them. We were a licensee [13] originally and with the license, it was changed to [14] sign over to — changed the repeater from Modjeska to [15] Santiago. We became an end user at that time.

[16] Q: Was there someone that told you that that [17] was a bad thing that had happened?

[18] A: I don't remember.

[19] Q: Did someone come to you and indicate that [20] you had been in some way snookered out of a license [21] that was very important or very valuable?

[22] A: Yes, that was at the discussion with the [23] FCC.

[24] Q: Can you recall who it was at the FCC that [25] said that?

[1] A: No, I cannot.

[2] Q: Let me ask you this question. Are you [3] sure it was a conversation that you had with someone [4] at an FCC location?

[5] A: Yes.

[6] Q: How is that?

[7] A: It was — when I went up to — met with [8] them at Cerritos.

[9] Q: What was it that they told you, then, [10] that was the detrimental consequence of what had [11] happened?

[12] A: I don't remember.

[13] Q: Did they indicate to you that that meant [14] you got to operate on someone else's repeater rather [15] than have to put up your own repeater?

[16] A: I don't remember.

[17] Q: Was it an option for the school district [18] at the time of making this change to expend in the [19] neighborhood of \$10,000 to \$20,000 plus maintenance on [20] their own repeater?

[21] A: It was — the best of my recollection, it [22] was never discussed.

[23] Q: Did anyone at the school district that [24] you know of ever consider the possibility of operating [25] their own repeater at any point in time?

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[1] A: No.

[2] Q: Did you become aware at all at any time [3] that the Motorola repeater that you had been on was [4] significantly less powerful than the repeaters that [5] were being placed in common usage at the time?

[6] A: No.

[7] Q: Did anyone indicate to you any [8] information with regard to the fact that Motorola was [9] not interested in either turning up the power on that [10] repeater or replacing it with a more powerful repeater [11] because they were divesting themselves of that [12] conventional type of service?

[13] A: No.

[14] Q: MaComCo was providing some radio repair, [15] so forth and so on?

[16] A: MaComCo for a period of time and then [17] Advance Electronics towards the end of the time I was [18] there.

[19] (Discussion off the record.)

[20] BY MR. CRAWFORD:

[21] Q: Was there an option for you at all to be [22] able to remain at Modjeska and clear up the [23] interference problem?

[24] A: An option? I don't understand.

[25] Q: Right. Was that ever discussed as an

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[1] option —

[2] A: No.

[3] Q: — in any way?

[4] A: No.

[5] Q: Did anyone make you aware that in order [6] to move from one peak to another that a change in the [7] license was an FCC requirement?

[8] A: Yes.

[9] Q: When did that occur?

[10] A: That was initial discussions with [11] Mr. Kirk.

[12] MR. CRAWFORD: Why don't we take a break for [13] you to put a nickel in the meter.

[14] (Discussion off the record.)

[15] MR. CRAWFORD: We can mark the statement of [16] Richard W. Lewis to the Federal Communications [17] Commission, which is a total of four pages in length, [18] as Exhibit 6.

[19] (Exhibit 6 was marked for [20] identification by the reporter [21] and attached hereto.)

[22] BY MR. CRAWFORD:

[23] Q: Mr. Lewis, what was your understanding at [24] the time of the difference between the GP, special [25] emergency license, and the GB, conventional business

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[1] license?

[2] MR. KAY: GB.

[3] MR. CRAWFORD: GB.

[4] MR. KAY: You said "GP."

[5] MR. CRAWFORD: And if I didn't come out clear [6] on the record, the GP, "P" as in Paul, special [7] emergency, and the GB, conventional business, is "B" [8] as in bravo.

[9] Q: What was your understanding about the [10] differences between those two types of licenses?

[11] A: My understanding was that the GP when it [12] was issued or if that is the — GP is an emergency [13] license that was just for emergency uses only. And [14] the GP — or the GB, excuse me, is just a regular [15] conventional business license for regular, [16] conventional — or regular business use.

[17] Q: Now, was that your primary complaint [18] about the changes, that you believe, that the school [19] district had gone from a special emergency status to a [20] conventional business status?

[21] MR. HAYASHIDA: I don't know if the witness [22] ever said it was a complaint.

[23] BY MR. CRAWFORD:

[24] Q: Well, let me ask you this way. Was it a [25] complaint? From the next sentence in here, it seems

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[1] that it was, but perhaps I am mistaken.

[2] Was that change in the license a [3] complaint of yours or anyone at the Fullerton School [4] District?

[5] A: I can't comment on anyone at the school [6] district. It was not a complaint from me.

[7] Q: It indicates that you put it in the file [8] without noticing that it had been changed.

[9] How would you have acted differently if [10] you had noticed that it had changed from the emergency [11] to the conventional?

[12] A: I don't understand.

[13] Q: I'm trying to get at the gist of what [14] this statement is about.

[15] It seems to me here that what this [16] portion of the declaration is referring to is that a [17] change in the status of the license was made that you [18] weren't aware of and did not become aware of it [19] because you didn't notice it when the document came [20] in, and that there is something wrong with that [21] because in the following sentence, it states that, "I [22] never intended to change the FCC license."

[23] And I presume that that meant from [24] special emergency to conventional business.

[25] A: That's correct.

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[1] Q: Okay. So was that a complaint that you [2] had about the change in the service?

[3] A: I did not have a complaint in the [4] service.

[5] (Discussion off the record.)

[6] BY MR. CRAWFORD:

[7] Q: Did you believe that it was a mistake [8] somehow in either the paperwork or in the agreement [9] that the license was changed from a GP, once again, [10] that's "P" as in Peru, and to a GB, "B" as in bravo?

[11] A: A mistake?

[12] Q: Right.

[13] A: I have no recollection of that.

[14] Q: Other than the consequences that you have [15] described for us already, were there any other [16] consequences that you were concerned about?

[17] And when I use the word "consequences," [18] I'm referring to it in the same context that it is [19] used in this paragraph.

[20] A: No.

[21] Q: Do you believe that, and this is from [22] information you have from any source obviously other [23] than your attorneys, do you believe that Mr. Kay did [24] anything wrong, improper or

or unethical in his [25] business dealings with you?

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[1] To a large extent, they were indirect, [2] but at times you had some direct dealings and [3] correspondence with him.

[4] A: No.

[5] (Discussion off the record.)

[6] BY MR. CRAWFORD:

[7] Q: This appears to be some information [8] related to the frequencies possessed by the Fullerton [9] School District. Actually, I believe we saw this [10] earlier.

[11] MR. HAYASHIDA: Yes.

[12] MR. CRAWFORD: I'm sorry. I should have handed [13] it to you first which, from this document, although it [14] is not completely clear, it does seem to indicate a [15] radio service of either G8 or GP.

[16] Q: What we're seeking is any information you [17] have as to whether or not a GP license was ever held [18] by the school district.

[19] A: I don't — I don't know.

[20] Q: Did you rely upon the information given [21] to you by the FCC, then, in making this statement [22] about the change from the GP to the GB?

[23] A: Yes.

[24] MR. CRAWFORD: Why don't we mark that as [25] Exhibit 7.

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[1] (Exhibit 7 was marked for [2] identification by the reporter [3] and attached hereto.)

[4] BY MR. CRAWFORD:

[5] Q: Prior to your departure or, for that [6] matter, after your departure from the Fullerton School [7] District, did you give Eddie Cooper any instruction on [8] what he should do with regard to the licensing at all?

[9] A: No.

[10] Q: Did you ever tell him — and I'm not [11] trying to argue with you, but I'm just trying to [12] clarify things, jog your memory if it exists and [13] definitely put it aside if that is the case — did you [14] ever instruct him to go after the license and try to [15] get it back to the way that it was before?

[16] A: No.

[17] Q: Did you have anything to do at all with [18] the actions that Ed Cooper took subsequent to your [19] departure with regard to the school district license?

[20] MR. HAYASHIDA: I'm going to object. Asking [21] for the witness to speculate as to what Ed Cooper did [22] when this witness was not there.

[23] MR. CRAWFORD: Okay. Your objection is well [24] taken and I'll try to work around it, Counsel.

[25] Q: To your knowledge, did you have anything

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[1] to do with Eddie Cooper and the radio licensing [2] activities that he had, and just to your knowledge, at [3] all?

[4] MR. HAYASHIDA: Let me object. You are [5] assuming facts not in evidence.

[6] MR. CRAWFORD: All right.

[7] Q: Do you have any knowledge of any actions [8] that Eddie Cooper took with regard to the radio [9] license subsequent to your departure?

[10] A: Prior to my leaving?

[11] Q: Subsequent, sir.

[12] A: No.

[13] Q: Did he take any actions with regard to [14] the license that you are aware of before your [15] departure?

[16] A: No.

[17] Q: Subsequent to your departure, did you [18] ever hear from Mr. Eddie Cooper again with regard to [19] the radio and school district radio matters?

[20] A: I don't remember.

[21] Q: When was the first time you heard [22] anything at all about the Fullerton School District [23] radio licensing matters subsequent to your departure?

[24] A: From a phone conversation with somebody [25] from the Federal Communications Commission asking if I

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[1] could be available to discuss situations with them, [2] and then a couple of phone calls and then the [3] discussion in Cerritos.

[4] Q: Can you recall when the meeting in [5] Cerritos was?

[6] A: It was late January, early February of '95, I believe it was.

[8] Q: If I understand correctly, this document [9] was executed in February of 1995.

[10] A: That's correct.

[11] Q: Okay. Can you recall who was at that [12] particular meeting in Cerritos?

[13] A: As I believe I stated before, it was [14] Mr. Hollingsworth and one other individual that I [15] don't remember the name.

[16] Q: It was not a meeting in which Mr. Cooper [17] was present, then?

[18] A: No, it was not.

[19] Q: Were you represented by counsel at that [20] meeting?

[21] A: No.

[22] Q: This was something that you did strictly [23] at the request of the Federal

Communications [24] Commission, then, if I understand it correctly.

[25] A: Yes.

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[1] Q: They didn't promise you anything at all [2] in exchange for you making any statements?

[3] A: No.

[4] Q: Did you speak to Ed Cooper before or [5] after that meeting with regard to what was either to [6] take place or had taken place?

[7] A: No.

[8] (Recess taken.)

[9] BY MR. CRAWFORD:

[10] Q: Mr. Lewis, do you recognize this document [11] here? It is on Communications Licensing Consultants [12] stationery. It is a rather blurred copy. It appears [13] to be addressed to you and it dated April —

[14] A: August.

[15] Q: You're right. It's August 21, 1991.

[16] A: Yes, I remember seeing that from — from [17] Agnes Pennington for signing the FCC license [18] application.

[19] Q: Did you receive the documents in due [20] course as indicated in this letter?

[21] A: I believe so, yes.

[22] (Exhibit 8 was marked for [23] identification by the reporter [24] and attached hereto.)

[25] BY MR. CRAWFORD:

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[1] Q: This was one addressed apparently to [2] Agnes Pennington.

[3] Do you recall receiving one like this for [4] the school district's copy?

[5] A: I don't remember.

[6] Q: Did a man by the name of Frank Vito [7] DeMarzo or any variant thereof ever contact you at [8] all?

[9] A: What is the name again?

[10] Q: Frank Vito DeMarzo.

[11] A: No.

[12] Q: He might have contacted you on behalf of [13] a business called CalComm.

[14] A: No, not to my recollection.

[15] Q: Have you ever had any contact from anyone [16] that you can recall having the last name of Pick, [17] P-i-c-k? It would likely have been a Harold Pick.

[18] A: Not to my recollection.

[19] Q: Also known as Century Communications or [20] CCS.

[21] A: No.

[22] Q: Did Mr. Cooper ever tell you that he had [23] been contacted by anyone who was helping him learn [24] anything about the radio business?

[25] A: No.

[1] Q: Did you ever have any contact with Ken [2] Thompson, Thompson Reprographics?

[3] A: No, not to my recollection.

[4] Q: Were you ever around when Ken Thompson [5] and Thompson Reprographics were on the same frequency [6] as you were?

[7] A: No, not to my recollection.

[8] Q: Were you ever contacted by a Dr. Steppe, [9] Dr. Michael Steppe?

[10] A: No.

[11] Q: Did you, while you were at the Fullerton [12] School District, know who Dr. Steppe was?

[13] A: Yes. He —

[14] MR. HAYASHIDA: I think he testified to this [15] early in his deposition.

[16] MR. CRAWFORD: All right.

[17] Same stipulation, Counsel?

[18] MR. HAYASHIDA: Yes, that would be fine.

[19] MR. CRAWFORD: All right.

[20] MR. HAYASHIDA: You can just add it to the end [21] of his deposition.

[22] MR. CRAWFORD: So stipulated.

[23] (Discussion off the record.)

[24] MR. CRAWFORD: Wait a minute. I have one more [25] quick question.

[1] Q: Did Ed Cooper also indicate to you that [2] he had made a witness statement to the FCC?

[3] A: No.

[4] Q: Did anyone at the FCC indicate to you [5] that Ed Cooper had made a witness statement?

[6] A: Not to my recollection, no.

[7] MR. CRAWFORD: Okay. No further questions.

[8] (Whereupon, it was previously [9] agreed between counsel to relieve [10] the court reporter of her duties [11] under the Code; she will [12] transcribe the deposition in due [13] course; she will forward the [14] original of the deposition [15] transcript to counsel for the [16] deponent; Mr. Hayashida's office [17] will give the deponent an [18] opportunity to read the deposition [19] transcript, sign the deposition [20] transcript under penalty of [21] perjury after having made any [22] corrections deemed by the deponent [23] and counsel to be appropriate; [24] notice of those corrections shall [25] be given to all parties in this

[1] action within 45 days of the [2] receipt by their office of the [3] original deposition transcript; [4] counsel for the deponent shall [5] maintain custody of the

original [6] and hereby stipulates to make it [7] available for any purpose in this [8] proceeding; if the deposition [9] transcript is unavailable for any [10] reason, a certified copy may be [11] used in lieu thereof as though it [12] were a signed original along with [13] any corrections having duly been [14] made pursuant to this stipulation; [15] and in the event that the deponent [16] does not sign the deposition [17] transcript, likewise, a certified [18] copy and the original shall [19] operate as though they were signed [20] originals.)

[22] (ENDING TIME: 4:20 P.M.)

STATE OF _____)

_____) ss.
COUNTY OF _____)

I, the undersigned, say that I have read the foregoing deposition, and I declare, under penalty of perjury under the laws of the State of California, that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____, 199__ at _____

RICHARD WILLIAM LEWIS

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James A. Kay, Jr.
P. O. Box 7890
Van Nuys, CA 91409
(818) 894-3566
02/17/92

7
for identification
LORI SCINTA, CSR #4811
Date: _____
W/ _____

Fullerton Elementary School District
1401 W. Valencia Drive
Fullerton, CA 92633

Attn: Mr. Rick Lewis

Re: Radio system

Dear Sir:

Pursuant to your conversations with Mr. Don Kirk of Newport Radio this letter is to forward to you the FCC license application for the Fullerton Elementary School District (Fullerton) to use a repeater located at Santiago Peak.

Mr. Kirk has asked me to prepare and file the FCC license application form for Fullerton to change repeaters.

Please sign the attached FCC license form at the red "X" and return in the envelope provided. You should make a photocopy of the application and keep the copy for your records.

Your attention to this matter will be appreciated. If you have any questions please call me at your earliest convenience.

Sincerely,

James A. Kay, Jr.
James A. Kay, Jr.

11's 1 - (page 1 of 2)
for identification
LORI SCINTA, CSR #4811 11.6.96
Date: _____
W/ Lewis

3060 U128 Expires 6/31/92

Federal Communications Commission APPLICATION FOR PRIVATE LAND MOBILE AND GENERAL MOBILE RADIO SERVICES

ANY NOTICE: ALL applicants MUST include the PROPER FEE with their application and MUST FILE those one of the PROPER LOCATION. Refer to the current fee publication or contact the Consumer Assistance Federal Communications Commission, Gettysburg, PA 17228 (717) 337-1218.

COMMISSION USE ONLY

Page No. 1 of 1

Table with columns: Frequency, Station Class, No. of Sites, Station Designation, Output Power, P.E.P., A.L.L., Band, Ant. Hgt., Azimuth, Azim. Range, Antenna Location, Antenna Length, No. of Channels, etc.

15. City, 16. County, 17. State. Includes checkboxes for Countywide, Metropolitan, Suburban, and Other Orange County California.

18. Name of Primary Control point (include telephone number) and location of all Radio Control sites with antenna under 60 ft. GROUND ONLY. 1401 W. VALENCIA DRIVE. FULLERTON, CA 92633 (714) 447-7448 (MEETS 20' RULE) (5 CONTROLS AT THIS ADDRESS)

19. Applicant/Licensee Name (See Instructions) FULLERTON ELEMENTARY SCHOOL DISTRICT

20. Mailing Address (Number & Street, P.O. Box or R.F. No.) RICK LEWIS ADDRESS: 1401 W. VALENCIA DRIVE

21. City, 22. State, 23. ZIP Code. FULLERTON, CA, 92633

24. Provide description of the structure on which your antenna is mounted and the height above ground in the top of the structure. Table with columns: Col Sign, Antenna Structure, Structure Type, Structure Height Above Ground, Aircraft Landing Area Name, Elevation Above Sea Level, Direction.

25. Has notice of same structure or alteration been filed with the FAA? Table with columns: Date Filed, Name Under Which Filed, FAA Office Where Filed.

26. Applicant Classification: Individual, Partnership, Association, Corporation, Govt. Entity. 27. Eligibility (Describe Applicant): APPLICANT OPERATES AN ELEMENTARY SCHOOL DISTRICT. RADIOS TO BE USED BY SCHOOL DISTRICT EMPLOYEES TO COORDINATE SCHOOL BUSES AND TO PROVIDE FOR AN EMERGENCY COMMUNICATIONS SYSTEM.

28. Doest application include the complete system? 29. Supplemental information for Trunked and Overlapped systems. Includes type of system and frequency band requested.

30. Certification: READ CAREFULLY BEFORE SIGNING. Includes instructions for applicants and a certification statement.

31. Name of person completing this application: RICK LEWIS, (814) 894-3688

32. Frequency Band Requested: (Check One) 90.75(a)(1)

FOR COORDINATOR USE ONLY. Includes fields for Applicant Name (RICK LEWIS), Signature (Rick Lewis), and Date (02/18/92).

Exhibit 1 page 2 of 2

7



REPEATER AGREEMENT

NEWPORT RADIO COMMUNICATIONS, INC. hereinafter called Company, agrees to furnish the non-exclusive use of the below described station to the undersigned Customer for the full term and amount stated below, and in consideration thereof, Customer agrees to make the full number of payments at the number and amounts stated below, commencing on the date Company makes the station available.

STATION DESCRIPTION: S.N.R. BASE STATION	
STATION LOCATION: SANTIAGO PEAK	CUSTOMER NO.: 0100
EQUIPMENT SUPPLIER: NEWPORT RADIO COMMUNICATIONS, INC.	CUSTOMER BUSINESS ACTIVITY: SCHOOL DIST.
SPECIAL PROVISIONS	
<input type="checkbox"/> This station will operate under a special use permit from the U.S. Forest Service (U.S.F.S.). The permit fee is currently 5% of the annual amount or a minimum of \$30.00/year. U.S.F.S. fees apply separately to each station located on U.S.F.S. lands. The permit fee is subject to change by the U.S.F.S. and will be added to the contract amount.	
<input type="checkbox"/> Airtime billing will include an allowance of <u>N/A</u> minutes per control, base, mobile, and portable per month (averaged over the entire radio system) in the base rate. Airtime usage in excess of that allowance will be billed at <u>N/A</u> cents per minute. Transmissions will be monitored from 7 A.M. to 7 P.M. Monday through Friday. Unlimited business transmissions will be allowed at other hours at no additional charge. Airtime billing does not include airtime usage accumulated during use of interconnect service.	
<input type="checkbox"/> Interconnect Service (Telephone Interconnect) will be provided for <u>N/A</u> mobiles/portables. Users of interconnected phone service agree to pay all telephone toll charges and message units. Airtime rate for interconnected calls; incoming: <u>N/A</u> cents per minute; outgoing: _____ cents per minute. Note: Radio dispatch transmissions take priority over interconnected mobile phone service. Interconnect service is provided only on a "time available" basis, as determined by Company, and is subject to availability.	
<input type="checkbox"/> Other: _____ <u>N/A</u>	
Boxes checked above apply to and are made part of this contract.	

TERMS OF PAYMENT:

All payments will be in advance for the services at the monthly rates stated below.

NO. OF CONTROLS/BASES	NO. OF MOBILES/PORTABLES	NO. OF INTERCONNECTS	CONNECTION FEE	MONTHLY RATE	SECURITY DEPOSIT
3	56	N/A	150.00	450.00	1350.00
RATE PER CONTROL/BASE	RATE PER MOBILE/PORTABLE	RATE PER INTERCONNECT	BASE NO. OF UNITS	RATE IF BASE NO. OF UNITS EXCEEDED	
7.63	7.63	N/A	59	N/A	

Payments will be paid quarterly, due on the 1st day of each calendar quarter. Billing is to be prorated to calendar quarters. In the event that Company elects to change its billing from quarterly to monthly, payments will be due monthly in advance, due on the 1st day of each calendar month. Billing will then be prorated to calendar months. The initial "monthly rate" is subject to change by Company on an annual basis, as provided for in this Agreement.

- a) **Number of Units:** The base number of units stated above is the initial number of units (base, control, mobile, portable) that Customer represents he will use as part of a radio system which includes the above described station. Customer agrees to obtain Company's written approval prior to increasing the number of units above the base number or adding any peripheral equipment such as signaling, tone data or interconnect equipment at which time Customer agrees to pay Company, in addition to the rates already in effect, the amount stated above under "Rate If Base No. Units Exceeded", for the remaining term of this agreement. Failure to obtain Company's approval before placing additional units or peripheral equipment in service shall cause Customer to owe four times the amount of the increase in rate for the period of time the units were in service without permission. (Company reserves the right to request the removal of additional or peripheral equipment if in the opinion of Company, such equipment causes undesirable operation of the station and customer agrees to remove said equipment upon demand.) A subsequent reduction of the number of units shall not reduce the payment amount unless requested by Company.
- b) **Connection fees:** Upon execution of this agreement, Customer agrees to pay the connection fee stated above. The connection fee shall be a one time non-refundable charge. Units added subsequent to the initial connection shall also incur a connection fee equal to the original "Connection Fee" divided by the "Base No. of Units" times the number of units being added to the system.
- c) **Security Deposit:** The security deposit shall be non-refundable for the term of this agreement. Customer acknowledges that the security deposit shall be received and held by Company as security for the continuing performance of Customer's obligations hereunder. In the event such deposit is utilized by Company at its sole option and discretion, for application to satisfy any obligation of Customer hereunder, application of such security deposit to satisfy such obligations shall not relieve Customer of its continuing obligations hereunder, nor shall it be interpreted as a release of any claims or remedies against Company. At the termination of this agreement, Company shall refund security deposit or any portion thereof not utilized by Company to meet obligations of Customer. Company shall not be under any obligation to retain Customer's security deposit in an interest bearing or other special ear-marked account for the benefit of Customer.
- d) **General Provisions:** The undersigned certifies that he has read and understands all of the terms and conditions on the front and back sides of this agreement, and each party acknowledges receipt of a true copy hereof at the time of execution. All of the terms and conditions on the reverse side hereof are part of this agreement. **ALL THESE ARE NO EXPRESS OR IMPLIED WARRANTIES, MODIFICATIONS, OR PERFORMANCE GUARANTEES OTHER THAN THOSE EXPRESSLY STATED HEREIN.** The parties hereto agree that no subsequent modification, warranty, or waiver shall become valid until and unless it is reduced to writing and signed by Customer and Company.
- e) **Personal Guarantee:** Any person executing this agreement herein below on behalf of Customer, understands and warrants he is principal of Customer and execution of this agreement on behalf of Customer operates as a personal guarantee of payment of any sums incurred by Customer under the terms of this agreement.

COMPANY: NEWPORT RADIO COMMUNICATIONS, INC.

CUSTOMER FULLERTON SCHOOL DISTRICT

ADDRESS 1401 W. VALENCIA DRIVE

CITY, STATE ZIP FULLERTON, CA. 92633

PHONE (714) 447-7445

BY RICK LEWIS TITLE DIRECTOR TRANS./SAFETY SV

BY Rick Lewis DATE 6/18/92

BY [Signature] DATE 6-23-92

(Signed)

This agreement is made and becomes valid only when signed by an officer of Company.

- f) **Permits, Licenses and Regulations:** Customer agrees and understands that it is Customer's responsibility to abide by all Federal, State and local regulations pertaining to the installation and operation of the station and of Customer's equipment. Customer agrees to secure at his own expense all licenses and permits required by law or ordinance. Customer agrees and understands that changes in rules and policies by agencies or persons other than Company that affect the operation or use of Customer's equipment and of the station are not the Company's responsibility. Customer agrees to provide Company with a copy of its FCC license, license application, FCC assignment of authorization, U.S. Forest Service permits and any other documents required for the use of said station within 30 days of the starting date of this agreement.
- g) **Liability:** Customer agrees and warrants that he will defend, indemnify and hold harmless Company from any liability arising from or in connection with Customer's use of the station. Customer will, upon notice, appear and defend any action brought against Company by any party arising from or in connection with Customer's use of the station and Customer will pay all of Company's costs and legal fees in connection therewith. Company shall have no liability to Customer or other parties for failure of the station to operate except insofar as a diminution of Customer's use charge for the station for the period during which such nonfunctioning shall exist provided the nonfunctioning condition exists for a period of 5 consecutive days or more. Recognizing that it is difficult or impossible to ascertain the nature and extent of any damages which may be caused by legal fault on the part of Company, the parties hereto hereby fix the sum of one hundred dollars as complete and liquidated damages and not as a penalty in the event a court of law or equity determines such damages are the fault of Company.
- h) **Radio and Telephone Channels:** Customer understands that any radio channels or telephone channels used in connection with the station are of his own choosing and responsibility, although Company may, at Customer's request, assist with the selection of radio and/or telephone channels and assist Customer with the filling out of application forms necessary to obtain the use of such channels. Company does not guarantee that the channels will be obtained or continued, or that the channels will be adequate to satisfy Customer's requirements. Furthermore, Customer understands that Company has no control or responsibility as to the charges levied for the channels or as to the number of other users sharing channels with Customer or as to the amount of airtime available.
- i) **Coverage and Interference:** Representations concerning the distance at which useable radio signals may be transmitted and received by the station or location thereof shall not be binding upon Company unless reduced to writing and made part of this agreement. Customer is hereby notified that the station is subject to degradation of performance from, but not limited to natural and man-made phenomena such as so-called "skip" interference, power line and ignition noise, intermodulation, co-channel interference and interference from users of the same or other radio frequencies. Such interference and noise can be minimized by the addition of corrective devices (at Customer's expense) suitable for particular locations and installations. Company will make recommendations as to the use of such devices, however complete freedom from noise and interference cannot be guaranteed and no one is authorized to make, on behalf of Company, any representations to the contrary. The Company is not responsible for interference due to the above or other causes.
- j) **Title:** Customer shall have no right, or interest in the station except the non-exclusive use thereof as expressly set forth in this agreement.
- k) **Site Access:** Access to station shall be limited only to Company its authorized representatives, authorized contractors and the Federal Communications Commission (FCC).
- l) **Use:** It is expressly agreed by Customer and Company that: (1) Customer shall at all times until the expiration of this agreement hold an FCC station license for the equipment. (2) While using the station, Customer shall be responsible for its proper operation in compliance with FCC rules. (3) Customer hereby consents to the execution of agreements between Company and other parties eligible to share the station under FCC rules, whereby such parties may utilize and share said station with Customer. (4) During the time that Customer is using the station, he shall have the right to exclude other Customers from exercising control of said station. (5) Customer may be excluded from exercising control over said station while the station is in use by other Customers. (6) Company has no control over the amount of time that said station will be available for Customer's use and that the amount of time that Customer uses or does not use said station shall in no way alter Customer's obligations to make payments to Company at the stated amount. (7) Customer represents that he has independently ascertained that the station is adequate and proper for Customer's intended use and has entered into this agreement based solely upon said independent investigation, and not by any representation by Company. (8) Customer agrees to conform to all rules of common courtesy and if in the opinion of Company, Customer continuously violates such rules or the rules of the FCC, Customer is in default of this agreement. (9) Customer will not utilize said station to communicate between base/control stations. (10) Customer may not permit anyone other than Customer and its employees to use the station described herein. (11) Customer may only use the station for the business activity Customer originally represented to Company. Any violation of the foregoing terms shall constitute a material breach by Customer, and a default under this Agreement.
- m) **Failures and Maintenance:** To insure proper performance, Customer will obtain contract service with his equipment supplier (or other service agency authorized by Company) for the maintenance of its equipment. If Customer fails to obtain contract service, Company may obtain contract service for Customer and Customer agrees to reimburse Company for the cost of said service plus a reasonable administration charge. Company agrees to contract service of Company's equipment to a reputable service agency. Maintenance to the station will be performed only during normal working hours, although the station will be available for use at all times (except for failures). Customer is hereby notified and understands that the station will not provide communications 100% of the time and it will, by its very nature, fail and require maintenance from time to time without notice. Such facts have been taken into consideration by Customer prior to the execution of this agreement, and such failures shall not constitute non-performance or negligence on the part of Company so long as Company expends its best efforts to promptly effect any necessary repairs and maintenance in order to restore communications in the event of failure.
- n) **Inspection and Modifications:** Customer agrees to make all radio units available to Company for inspections and/or modifications that are legally required or deemed desirable by Company and at the sole discretion of Company. Customer agrees to make all of his radio equipment available during normal working hours to Company or his agents for such inspections and/or modifications. Customer is responsible for the cost of any modifications that are mandated by the FCC or other legal authority or when Company mandates said modifications due to Customer violations of this agreement and Company cannot guarantee that such modifications will not degrade the system performance. Company shall not be liable for Customer's loss of use of the vehicle, personnel, radio equipment or consequential damages during such inspections and/or modifications.
- o) **Transfer of Repeater Station:** In the event that any State, local or Federal governmental agency causes the repeater station and/or its location to become unavailable, Company shall make another similar station and/or location available, and such modification of station and/or location shall not affect the obligations of Customer.
- p) **Termination:** In the event of termination of service, licensee agrees to assign their license to Company (or Customer of Company). Failure to do so will obligate Customer to continue payments as stated on the reverse side herein until Company receives a properly signed assignment of authorization. Should Company be unable to provide service to another Customer as a result of Customer's failure to assign license, Customer shall be liable to Company for Company's loss of profit as a result of Customer's failure to assign license.
- q) **Default:** Customer shall be in default should Customer violate any term or provision of this agreement, and fails to correct such default within (5) days of written notice thereof; or if Customer refuses to allow Company to perform or through any act causes Company to be unable to perform under this agreement; or in the event that any payment due remains unpaid for a period of ten (10) days; or if Customer is delinquent in any sums due to Buddy Corporation dba Southland Communications for any other business associated with Company; or if Customer makes an assignment for the benefit of creditors; or Customer becomes involuntarily or voluntarily bankrupt. If Customer defaults as hereinabove described, Company may declare the entire contract balance due and payable with interest thereon at the maximum legal rate. If Customer is in default on any term or condition, Company may within five (5) days after written notice thereof, disconnect Customer's access to the repeater station and otherwise prevent such use until Customer cures the default, reimburses Company for collection costs, pays a re-connection charge and provides an additional security deposit. The re-connection charge shall be \$200.00 or the original connection fee plus any subsequent connection fees, whichever is greater. The additional security deposit shall be equal to the re-connection fee described above, plus the sum of \$200.00. If payment of sums due remain unpaid for a period of thirty (30) days after becoming due, Company may disconnect Customer's access to the repeater station without further notice. Such disconnection shall not effect a reduction in any amount due under this agreement. If suit is brought to enforce any of the terms or provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- r) **Late Charges:** In the event any payment due hereunder shall remain unpaid for a period of ten days or more after the due date of such payment, Company shall be entitled to a late charge in an amount equivalent to ten percent of such late payment or ten dollars, whichever is greater.
- s) **Notice Provision:** Customer promises to notify Company in writing of each and every failure and/or malfunction on the part of Company or station, by certified mail, return receipt requested, not later than 48 hours after the occurrence of such failure and/or malfunction. Customer also agrees to inform Company of all changes of address, telephone, ownership, contact personnel, location of base station, or company structure within 10 days after said change. If notice is called for under any provision of this agreement, such notice shall be given by certified mail, return receipt requested, and regular U.S. Mail. Party shall be deemed to have received notice 2 days after the mailing of any notice by regular U.S. Mail.
- t) **Assignment:** Should Customer be unable to make further use of the station, and shall actually cease making use thereof, as a result of such inability, Customer shall be entitled to assign his rights and obligations hereunder with the express written permission of Company, provided, however, that the assignee shall be subject to the acceptance of Company, which acceptance Company will not unreasonably withhold. Upon assumption of the rights and obligations hereunder by said assignee, Customer and the persons signing this agreement on behalf of Customer shall remain liable for the assignee's performance hereunder. Company reserves the right to assign its rights and obligations hereunder.
- u) **Paragraph Heading:** The headings of the paragraphs herein are contained for reference and convenience only and should not be interpreted in connection with the actual provisions hereof.
- v) **Additional Charges:** Company will render additional billings for the following reasons: 1) License preparation for renewals, modifications, assignments, additions and deletions. 2) Investigating/repairing communications problems that are not created by a defect in the Company's equipment including but not limited to co-user interference, channel crowding, deliberate or accidental jamming and failures of Customer's equipment. 3) Service requests during hours other than Mon. - Fri. 8:30 A.M. to 5:00 P.M. excluding holidays. 4) The FCC, the U.S. Forest Service, any public utility, any frequency coordinator, or any other agency that requires any fees and/or deposits in connection with the use of the station. 5) In the event that Company procures and installs equipment to measure and invoice by airtime, Customer agrees to pay airtime charges at Company's prevailing rates for airtime usage provided Customer is notified of Company's revised rate schedule at least 60 days prior to the date the airtime charges commence. 6) Excessive use of the station. This determination is solely made by Company and will be based upon comparison to similar companies and conditions. Customer agrees to pay all the above fees and/or deposits upon notice.
- w) **Rate Adjustments:** The rates in this agreement may be adjusted each year due to cost increases beyond the control of Company. Should this occur, Company must give Customer 60 days written notice of its intention to adjust said rates. This adjustment may also be adjusted each year to compensate for corresponding increases in the consumer price index without notice to Customer.
- x) **Term:** This agreement shall be in effect for a period of five years and will be extended for additional five year periods unless either party shall give written notice by certified mail (return receipt requested) to the party of their intention not to extend the term of this agreement at least 60 days prior to the expiration of the initial term of this agreement or any extension thereof.
- y) **Misc. Provisions:** Time is of the essence in this agreement. The waiver of any term, provision or default shall not constitute the waiver of any other term, provision or default. This contract is made and to be performed at the offices of Company at Van Nuys, CA. This contract shall be governed by the laws of the State of California. If any part of this agreement shall be adjudged contrary to law, the remaining provisions hereof shall remain in full force and effect. The masculine gender as used herein shall include the feminine and neuter.
- z) **Additional Equipment:** Additional Customer equipment may be added only with Company approval. New purchases of equipment for augmenting an existing system, will be subject to the "Right of First Refusal" by the Company in the following manner: A written estimate of equipment with model numbers and prices quoted, will be submitted to the Company for a competitive quote. If the Company meets the price for identical merchandise, the Customer will award the sale to the Company. If the Company declines to quote or fails to respond within 5 days after a proper quotation is rendered, Customer may award the sale to any accredited dealer of his choice. Used equipment will be subject to the same "Right of First Refusal". In addition, Company reserves the right to inspect (at Customer's expense) and approve any used equipment prior to operation to ascertain the suitability of such equipment for use with Company's station.

OCT-11-94 20:58
MAY-20-1993 13:29 FROM FULLERTON SCH. DIST 4477414 TO
JUL-07-'92 11:31 T-HRSSH

TEL: 916194843451 P.12
P.15

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James A. Kay, Jr.
P. O. Box 7890
Van Nuys, CA 91409
(818) 894-3566
07/07/92

Mr. Rick Lewis
Fullerton Elementary School District
1401 W. Valencia Drive
Fullerton, CA 92633

Re: Radio station license

Dear Sir:

Pursuant to our telephone conversation attached are:

1. A letter addressed to FCC prepared for your convenience.
2. A copy of FCC rule sections 90.127(d)(1) and 90.127(c)(2) for your review.

Please review the letter to FCC for accuracy. The FCC's FAX number at their Gettysburg, PA offices is (717) 337-1541. If the letter is acceptable to you please sign and FAX to FCC marked on your cover page to the attention of Mr. Ron Fuhrman. If you wish any changes made to the letter please call me and I will make the changes and FAX to you the revised letter.

This type of review by FCC is very much out of the ordinary but is the result of fierce competition that is being waged by radio shops in the greater Los Angeles area for scarce frequencies. There should be no further problems with Fullerton's application.

Sincerely,

James A. Kay, Jr.
James A. Kay, Jr.

EM 11/11
for identification
LOUI CORTEZ, OCT #4811

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**FULLERTON
SCHOOL
DISTRICT**

Learning for a Lifetime

July 8, 1992

Mr. Ron Fuhrman
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA. 17325

Regarding: Application File #586451

Dear Sir:

As a follow up to our recent phone conversation, this letter will confirm in writing the following:

The Fullerton School District desires to obtain repeater service from a repeater provided by Mr. James A. Kay, Jr. The location of this repeater is to be at Santiago Peak, near Corona, California. The Fullerton School District understands that an application is currently pending for Mr. Kay under Federal Communications Commission File #586451.

The Fullerton School District is aware of and has a copy of Federal Communications Commission rule sections 90.127 (C) (1) and 90.127 (C) (2). The Fullerton School District has applied for 52 mobile units and 8 portable units on the referenced application. The Fullerton School District currently possesses over 50 radio units (exact quantity would have to be determined by actual count/audit). These radios are currently in operation on a daily basis. The Fullerton School District will place in operation a minimum of the requested 60 radio units within 8 months on the grant of the requested license. The Fullerton School District will comply fully with Federal Communications Commission rule sections 90.127 (C) (1) and 90.127 (C) (2).

Your attention to the prompt grant of our requested license will be sincerely appreciated.

If you require additional information, please contact me at (714) 447-7445.

Cordially yours,

Rick Lewis

Rick Lewis, Director
Transportation/Safety Services

1401 West Valencia Drive
Fullerton, California 92632
(714) 447-7400

Board of Trustees:
John W. Bedell, Ph.D.
Robert C. Fidler
Marjorie Pogue

Elene Reyes-Jones
Antia Varela

District Superintendent
Duncan Johnson, Ed.D.

RL:lc

Date: _____
W: _____

11's
Date: _____
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11.7.96

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