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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
) WT DOCKET NO. 97-56  
**MARC SOBEL** )  
) )  
Applicant for Certain Part 90 Authorizations )  
in the Los Angeles Area and Requestor of )  
Certain Finder's Preferences )  
) )  
**MARC SOBEL AND MARC SOBEL** )  
**D/B/A AIR WAVE COMMUNICATIONS** )  
) )  
Licensees of Certain Part 90 Stations in the )  
Los Angeles Area )

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S OPPOSITION TO  
JOINT MOTION TO STRIKE**

1. On January 29, 1998, Marc D. Sobel ("Sobel") and James A. Kay, Jr. ("Kay") (collectively "Movants") filed a "Joint Motion to Strike" the Wireless Telecommunication's Bureau's Reply Brief filed on January 23, 1998. The Chief, Wireless Telecommunications Bureau ("Bureau"), by his attorneys, hereby opposes the Joint Motion.

2. Movants seek to strike the Bureau's Reply Brief on timeliness grounds. On January 12, 1998, Sobel and Kay filed their respective exceptions to the Initial Decision, FCC 97D-13 (released November 28, 1997) ("I.D."), in this proceeding. The Bureau filed its consolidated Reply Brief to both the Kay and Sobel exceptions on January 23, 1998. Movants argue that under Section 1.276(c) of the Commission's Rules, 47 C.F.R § 1.276(c),

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the Bureau's Reply Brief should have been filed no later than January 22, 1998, ten days after Sobel and Kay filed their respective exceptions. Moreover, the Movant's argue that notwithstanding the Bureau's Certificate of Service averring service on January 23, 1997, service was not actually effected until January 26, 1998, as demonstrated by the postmark of the envelope containing the Bureau's Reply Brief. Movants further assert that the Bureau neither sought consent nor showed good cause for submitting its reply brief on January 23, 1998.

3. As demonstrated below, the Bureau timely filed its Reply brief, and thus the Joint Motion to Strike must be denied. Section 1.277(c) of the Commissions Rule's provides that a party may file a reply brief within ten days after the time for filing exceptions has expired. 47 C.F.R. § 1.277(c). This section of the rules, however, must be read in conjunction with Section 1.4(h) of the Commission's Rules, which provides an additional three days for filing a response when the pleading to which it responds is served by mail. Section 1.4(h) provides in pertinent part:

If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.4(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding to file a response.

47 C.F.R. § 1.4(f).

4. In the instant case, each party in this proceeding was required by rule to serve its exceptions to the I.D. upon the Commission and all other parties to the proceeding. *See* 47

C.F.R. §§ 1.276 and 1.1208. Sobel and Kay filed their respective exceptions on January 12, 1998. While Sobel served copies of his exceptions by hand (or facsimile), **Kay served copies of his exceptions by mail.** Since Kay served copies of his exceptions on the other parties via mail, the Bureau was entitled to avail itself of the three additional days afforded by Section 1.4(h) to file its consolidated Reply Brief. Accordingly, the date by which the Bureau was required to file its Reply Brief was January 27, 1998. As indicated above, the Bureau filed its Reply Brief on January 23, 1998. Consequently, the Bureau filed its Reply Brief *early*, rather than late.

5. Movants other claims also lack merit. Notwithstanding the date of the postmark, service is complete upon mailing. 47 C.F.R. § 1.47(f). In the instant case, the Bureau caused its Reply Brief to be mailed on January 23, 1998. Even assuming, *arguendo*, that the Reply Brief was mailed on January 26, 1998 (which it was not), the Reply Brief still would have been timely filed, given the January 27, 1998, due date. Furthermore, special consent or a showing of good cause is required only in instances where a late-filed pleading is contemplated. The Bureau was under no obligation to seek special consent or show good cause to file its Reply Brief, which was submitted *before* the required deadline.

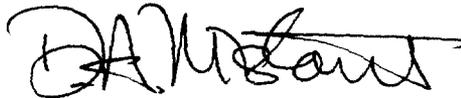
6. For the foregoing reasons, the Bureau asks the Commission to deny Movants' Motion to Strike.

Respectfully submitted,

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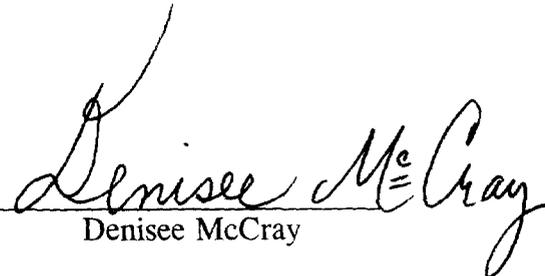
**CERTIFICATE OF SERVICE**

I, Denisee McCray, a secretary in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have on this 9th day of February 1998, caused to be sent by first-class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Joint Motion to Strike" to:

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