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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

OCT - 6 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**COMMENTS ON "FURTHER MOTION FOR LEAVE TO FILE**  
**SUPPLEMENT EXCEPTIONS"**

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now comments on the "Further Motion for Leave to File Supplement Exceptions" [sic] filed by Marc D. Sobel (Sobel) on October 2, 1998.

2. Sobel requests leave to file supplemental exceptions to his pending Consolidated Brief and Exceptions in this proceeding in order to discuss the Commission's decision in Rainbow Broadcasting Co., FCC 98-185 (released August 5, 1998). Sobel seeks to argue that the Commission's decision in Rainbow is relevant to

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the question of whether Sobel knowingly and intentionally engaged in disqualifying misconduct.

3. The Bureau doubts whether it is necessary for Sobel to file additional supplement exceptions discussing the Rainbow decision. The Bureau does not believe that the Commission needs Sobel's assistance in determining the relevance, if any, of the Rainbow decision. The Bureau notes that Sobel raised the issue of reliance on counsel in his exceptions (Sobel Exceptions, p. 23), and the Bureau has responded to that argument (Bureau Reply Brief, p. 8). On the other hand, if the Commission believes it would be of assistance to have Sobel and the Bureau comment upon the Rainbow case, the Bureau does not actively oppose Sobel's request.

4. The Bureau fully agrees with the Commission's holding in Rainbow that "the applicant's knowledge of the misconduct is a highly relevant factor in determining whether disqualification is appropriate." In this case, the record fully shows that Sobel knew he was misrepresenting facts to the Commission when he told the Commission that "Mr. Kay has no interest in any radio station or license of which I am the licensee." Bureau Reply Brief, pp. 7-8. "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." Leflore Broadcasting Co. Inc. v. FCC, 636 F.2d 454, 462 (D.C. Cir. 1980). The Bureau thus views the Rainbow decision as supporting the revocation of Sobel's licenses.

5. The Bureau is also concerned that any supplements not unduly delay the resolution of this proceeding. In that regard, the Bureau again notes that in the James A. Kay, Jr. proceeding (WT Docket No. 94-147), an issue has been specified to determine whether, based upon the findings and conclusions reached in this proceeding, Mr. Kay is qualified to remain a Commission licensee.<sup>1</sup> The Bureau believes it would be in the interest of both parties and the Administrative Law Judge in that proceeding for the Commission to issue a decision in this proceeding before the hearing in the Kay proceeding. The Bureau therefore urges that if the Commission authorizes Sobel to file a supplement, that such supplement not materially delay the preparation of a decision in this proceeding.

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<sup>1</sup> Memorandum Opinion and Order, WT Docket No. 94-147, FCC 98M-15 (released February 2, 1998).

6. Accordingly, the Bureau requests that however the Commission act on Sobel's "Further Motion for Leave to File Supplement Exceptions," that such action not delay the issuance of a decision in this proceeding.

Respectfully submitted,  
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Chief, Wireless Telecommunications Bureau



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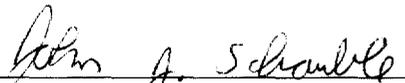
CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 6th day of October, 1998, sent by first-class mail, copies of the foregoing "Wireless Telecommunications Bureau's Comments on Further Motion for Leave to File Supplement Exceptions" to:

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