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March 27, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, D.C. 20002

**FILED/ACCEPTED**  
**MAR 27 2008**  
Federal Communications Commission  
Office of the Secretary

RE: Reply to EB's Opposition; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Reply to Enforcement Bureau's Opposition to Defendants' Motion to Compel Appropriate Oaths or Affirmations to Enforcement Bureau's First and Second Interrogatory Responses and Objections, in the above-referenced matter.

Sincerely,

*Catherine Park, Esq.*

Catherine Park, Esq.

Enclosures: Original + 6 Copies

No. of Copies rec'd 0+6  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D:C. 20554**

In the Matter of )  
)  
Kurtis J. Kintzel, Keanan Kintzel, and all ) EB Docket No. 07-197  
Entities by which they do business before the )  
Federal Communications Commission )  
)  
Resellers of Telecommunications Services )

To: Presiding Officer/Judge, Richard L. Sippel (Chief ALJ)

**FILED/ACCEPTED**  
**MAR 27 2008**  
Federal Communications Commission  
Office of the Secretary

**REPLY TO ENFORCEMENT BUREAU'S OPPOSITION TO DEFENDANTS'  
MOTION TO COMPEL APPROPRIATE OATHS OR AFFIRMATIONS TO  
ENFORCEMENT BUREAU'S FIRST AND SECOND INTERROGATORY RESPONSES  
AND OBJECTIONS**

1. Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, by and through undersigned counsel, hereby submit this Reply to Enforcement Bureau's Opposition to Defendants' Motion to Compel Appropriate Oaths or Affirmations to Enforcement Bureau's First and Second Interrogatory Responses and Objections ("Reply"). The Enforcement Bureau's Opposition ...<sup>1</sup> ("Opposition") makes no argument to refute Defendants' proof that the Enforcement Bureau late-filed its affirmations to its responses to Defendants' First *and* Second Sets of Interrogatories. Nor does the Bureau's Opposition offer any argument to refute Defendants' proof that the content of the Bureau's affirmations may not be appropriate because not made under penalty of perjury. As the Bureau has apparently conceded those points by failing to defend, Defendants respectfully

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<sup>1</sup> Enforcement Bureau's Opposition to Motion to Compel Enforcement Bureau to Submit Appropriate Oaths or Affirmations to its First and Second Interrogatory Responses and Objections, filed March 24, 2008.

request that the Presiding Judge impose appropriate procedural consequences on the Bureau for failing to file timely and appropriate affirmations to its responses to Defendants' First and Second Sets of Interrogatories.

**The Bureau Makes No Opposition Argument to Refute Defendants' Proof that the Bureau's Affirmations Were Late-Filed and Perhaps Inappropriate Because Not Made Under Penalty of Perjury**

2. The Bureau's Opposition makes no argument against Defendants' proof that the Bureau's affirmations were late-filed. *See* Opp. This is a change from the Bureau's previous position, in which the Bureau accused Defendants of "bad faith" for merely pointing out the truth—the Bureau's "affirmations," as such, were indeed late-filed. Opposition to Defendants' Second Motion to Compel Answers to Defendants' Second Set of Interrogatories and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath ("EB Opp. to Def. Second Mot. to Compel"), pp. 1-2.

3. The Bureau had earlier clung to the indefensible position that its second affirmation was filed on time, although it was not. The Bureau made such indefensible claim based on the fact that Bureau counsel had sent an email to Defendants' counsel, the day *after* the Bureau's interrogatory responses were due, informing Defendants' counsel that the Bureau counsel had been at home attending to a sick child, thus the Bureau's affirmation would be filed later in the week rather than on time. EB Opp. to Def. Second Mot. to Compel, p. 2. Defendants never consented to the late filing, nor was Defendants' consent even sought.

4. A sick child cannot prevent the Bureau from filing timely and appropriate affirmations. Defendants have parental responsibilities as well, yet have not missed one discovery deadline so far in this proceeding. In support whereof, the following is shown:

5. One of the Defendants, Kurtis J. Kintzel, is a single parent with custody of

children aged 13, 16, and 17, for two weeks out of every month. Kurtis J. Kintzel's home was sold in a foreclosure sale in January 2008, in which he was given one week's notice on January 15 to find another place to live by January 21, and to move his belongings out of the foreclosed property that same week. All the while, Kurtis J. Kintzel was confronted with a deadline for responding to Commission inquiries (the Requests for Admission to Kurtis J. Kintzel, which were due on January 24, 2008). And yet, those answers to the Requests for Admission were filed on time, as were all other discovery responses by Defendants in this proceeding. As a single parent raising three children (and supporting a fourth in college), Kurtis J. Kintzel understands that a sick child may place constraints on one's ability to respond to discovery requests, and yet Kurtis J. Kintzel has not missed a discovery deadline in this proceeding.

6. That the Bureau failed to attach an oath or affirmation to its responses to Defendants' *First* Set of Interrogatories is not even disputed by the Bureau in its Opposition to Defendants' Second Motion to Compel—and, indeed, it cannot be disputed. The first affirmation was filed 15 days late. *See* Notice of Filing—Affirmation in Connection with ... Defendants' First Set of Interrogatories, filed by the Bureau on March 7, 2008. The second affirmation was filed 3 days late. *See* Notice of Filing—Affirmation in Connection with ... Defendants' Second Set of Interrogatories, filed by the Bureau on March 7, 2008.

7. In the Bureau's Opposition to Defendants' Second Motion to Compel, the Bureau alleges that Defendants acted in "bad faith" merely because Defendants pointed out that the Bureau had late-filed its affirmations. EB Opp. to Second Mot. to Compel, pp. 1-2. That Bureau allegation of "bad faith" is now exposed for what it is—blatantly false. The Bureau failed twice to attach affirmations on time; there is no denying it.

8. Furthermore, the Bureau makes no opposition argument that it did not comply

with 47 C.F.R. § 1.16, which requires that oaths be submitted under penalty of perjury. Neither of the Bureau's "affirmations" is made under penalty of perjury. See Notice of Filing—Affirmation in Connection with ... Defendants' First Set of Interrogatories; Notice of Filing—Affirmation in Connection with ... Defendants' Second Set of Interrogatories.

**The Bureau Incorrectly Alleges That Defendants Were Not Prejudiced By the Bureau's Late-Filed and Apparently Inappropriate Affirmations**

9. The Bureau's Opposition alleges incorrectly that Defendants have not been prejudiced by the Bureau's late-filed and apparently inappropriate affirmations. Opp., p. 2. On the contrary, Defendants have been prejudiced, as follows:

10. It takes time and money for Defendants to answer discovery requests from the Bureau. To do it accurately, meaningfully, and *on time* increases the time and money that Defendants must pour into the effort. Defendants make costly use of a courier, and direct their legal counsel to work overtime. Defendants have invested substantial amounts of time and money into diligent and timely compliance with Commission regulations regarding discovery. If the Bureau is not held to the same standard of diligence, it would undermine the integrity of the discovery process.

11. Responses to Defendants' First Interrogatories were due on February 20, 2008. As of today, the Bureau still has not submitted appropriate affirmations. That means that the Bureau's responses are still incomplete, more than one month after they were due. Responses to Defendants' Second Interrogatories were due on March 4, 2008. As of today, still no appropriate affirmations, more than three weeks after they were due.

12. So far in this proceeding, Defendants have submitted, *on time, and under penalty of perjury*, answers to the Bureau's 68 Requests for Admission to Kurtis J. Kintzel; 53 Requests for Admission to Keanan Kintzel; 13 Requests for Admission to U.S. Bell; 21 Requests for

Admission to Avatar Enterprises, Inc.; 84 Requests for Admission to Buzz Telecom Corp.; 64 Requests for Admission to Business Options, Inc.; and 52 First Sets of Interrogatories to All Defendants. Defendants have also submitted responses to the Bureau's 61 Requests for Production of Documents to All Defendants, on time (these were not required to be submitted under penalty of perjury).

13. If the Presiding Judge will not impose procedural consequences on the Bureau under 47 C.F.R. § 1.323(d), such as adverse findings of fact and dismissal with prejudice, the Presiding Judge might consider requiring the Bureau to reimburse Defendants—for reasonable costs and reasonable attorney fees, and/or some monetary amount to compensate Defendants, because Defendants abided by Commission regulations regarding deadlines, and the Bureau not only failed to observe deadlines, but accused Defendants of “bad faith” for pointing out that the Bureau had failed to observe deadlines.

14. This entire series of motions could have been avoided if the Bureau had simply submitted appropriate affirmations with its interrogatory responses, in a timely manner, as Defendants have done. This entire series of motions also could have been avoided if the Bureau had admitted to its errors when they were initially pointed out by Defendants, and corrected them. But the Bureau, instead of acknowledging its failings with respect to the affirmations, hid behind the duties inherent in parenthood, and accused Defendants of “bad faith.”

15. Wherefore, in view of the foregoing, Defendants respectfully request that the Presiding Judge impose appropriate consequences, up to and including dismissal with prejudice; adverse findings of fact; requiring the Bureau to submit its affirmations under penalty of perjury; reasonable costs and/or reasonable attorneys' fees incurred by Defendants in obtaining Bureau compliance with Commission regulations regarding discovery; and/or a monetary amount to

compensate Defendants for the fact that they observed deadlines, only to be accused by the Bureau of "bad faith" merely for pointing out that the Bureau had failed to observe the same deadlines.

Respectfully Submitted,

Catherine Park

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*Certificate of Service*

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 27<sup>th</sup> day of March 2008, by hand delivery, to the following:

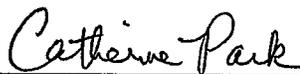
Marlene H. Dortch  
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And served by U.S. Mail, First Class, on the following:

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