Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Accepted/Files
OCT 14 2014
Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Application to Assign Licenses to Choctaw Holdings, LLC	)	WT Docket No. 13-85 FCC File No. 0005552500
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Applications to Modify and to Partially Assign License for Station WQGF 318 to Southern California Regional Rail Authority	)	FCC File Nos. 0004153701 and 0004144435
	)	
Application for New Automated Maritime Telecommunications System Stations	)	FCC File No. 0002303355
	)	
Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FCC File Nos. 0004030479, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

To: Marlene H. Dortch, Secretary

PETITION FOR RECONSIDERATION OF MEMORANDUM OPINION AND ORDER

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 4

II. HEARING PROCEEDINGS 7

a. Hearing Designation Order 7

b. Petition for Reconsideration 7

c. Repeated Requests for Expedited Action 8

d. Memorandum Opinion and Order 9

III. ARGUMENT 10

a. The Commission's Failure to Consider the HDO Reconsideration was a Procedural Error Warranting Correction 10

b. New Information not Available at Time of the HDO Reconsideration Shows DEMCO is Using AMTS Spectrum for Public Safety-Related Purposes 11

c. Recent Congressional and Public Safety Developments Highlight DEMCO's Need for the AMTS spectrum. 13

(i) Congressional Intention to Satisfy all Public Safety Needs 13

(ii) Lessons Of Hurricane Sandy 14

(iii) New Study On Health Effects of Emergency Situations 15

IV. DEMCO's Application Should be Treated Similarly to SCRRA's and Removed from the Hearing 17

V. CONCLUSION 19

PETITION FOR RECONSIDERATION OF MEMORANDUM OPINION AND ORDER

DIXIE Electric Membership Corporation ("DEMCO"), by its attorneys and pursuant to Section 1.106 of the rules and regulations ("Rules") of the Federal Communications Commission ("Commission"),[1] hereby submits this Petition for Reconsideration ("MO&O Reconsideration") of the Commission's Memorandum Opinion and Order ("MO&O")[2] in the captioned proceeding.

The Commission committed grievous procedural and substantive errors in the MO&O. The summary dismissal of DEMCO's Petition for Reconsideration ("HDO Reconsideration")[3] of the Hearing Designation Order ("HDO")[4] was a clear violation of procedural requirements and well-established precedent. The Commission should correct its procedural error and formally consider DEMCO's HDO Reconsideration in light of new facts and information occurring since DEMCO's filing more than three years ago.

The Commission's inexplicable conclusion that DEMCO's use of these frequencies "primarily serve(s) the business needs of [DEMCO]"[5] – and not public safety – is patently incorrect and must be reversed. DEMCO uses these frequencies to provide essential public safety services to the citizens of Louisiana in situations involving protection of life and property. Beyond any doubt, these frequencies do not primarily serve DEMCO's business needs, as the Commission erroneously concluded.

---

[1] 47 C.F.R. § 1.106 (2013).

[2] *In re Maritime Communications/Land Mobile, LLC, Debtor-in-Possession Application to Assign Licenses to Choctaw Holdings, LLC*, Memorandum Opinion and Order, FCC 14-133 (*rel.* Sept. 11, 2014).

[3] CII Companies' *Petition for Reconsideration*, filed May 19, 2011 (EB Docket No. 11-71)("*Petition for Reconsideration*").

[4] *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011) ("*HDO*").

[5] MO&O at ¶36.

The Commission should take this opportunity to recognize the obvious public-safety merits of DEMCO's request, remove the company's application from the hearing, and grant it after almost four years.[6]

I. INTRODUCTION AND SUMMARY

DEMCO is a rural electric cooperative providing electric service to more than 97,000 locations throughout seven rural parishes in Louisiana (East Baton Rouge, Ascension, Livingston, Tangipahoa, St. Helena, East Feliciana, and West Feliciana). DEMCO's electric distribution system includes 10 metering points for wholesale power and 34 substations for system reliability. The electric system is continuously monitored by its SCADA system to detect system failures. DEMCO maintains over 9,533 miles of energized lines: 227 miles of transmission facilities, 6,574 miles of overhead construction and 2,732 miles of underground cable. Since the commencement of this proceeding in 2011, the channels at issue have played an increasingly vital role in DEMCO's ability to serve the public safety requirements of the Baton Rouge area. In the last three and one half years, DEMCO has spent two million dollars upgrading its communications system in reliance on the continuing availability of the spectrum that it obtained from Maritime.

The State of Louisiana, including the region served by DEMCO, is particularly vulnerable to severe weather events threatening life and property due to its location off the Gulf of Mexico. Some of the recent damaging acts of nature to hit the State include Tropical Storm Lee in September, 2011, and Hurricane Isaac in August, 2012. In some emergency operations within the State, the DEMCO region serves as a staging area providing assistance to federal and state agencies.

[6] DEMCO filed its application on December 8, 2010 (FCC File No. 0004636537)

When power outages occur as a result of severe weather conditions or natural or manmade disasters, sometimes leaving thousands or tens of thousands of people without power, restoring power to every person, home, hospital, care center, government office and place of business is a public safety emergency and a top priority for DEMCO. During such emergency operations DEMCO's workforce, which under normal conditions consists of approximately 200 plus employees, increases in size by an additional 600 to 2600 workers, depending on the size of the emergency. Maintaining reliable and secure communications during such emergency response conditions is of ultimate import to the safety of DEMCO's work force and customers and the protection of the public.

To meet the critical life and death needs of the citizens of the Baton Rouge area, in 2010 DEMCO entered into an arms-length agreement with Maritime Communications/Land Mobile's ("MCLM") to acquire 1 MHz of AMTS A Block spectrum in the 217-218 MHz and 219-220 MHz band. The agreement called for the partitioning of Maritime's geographic license Call Sign WQGF316 to cover DEMCO's service area in the Baton Rouge region. A lease agreement allows for DEMCO to use the channels prior to consummation of the sale. On December 8, 2010, the companies filed an application to assign these frequencies from MCLM to DEMCO.[7]

The frequencies are used for voice communication in emergency situations, and are essential to DEMCO's ability to respond in dangerous situations threatening life and property, such as power outages and downed power lines,. Without these channels, DEMCO's first responder capabilities will be significantly compromised. This is not a simple "business application," as the Commission mistakenly concluded, but is directly related to public safety.

[7] *See,* FCC File No. 0004636537. Following the execution of the agreements and the filing of the assignment application, Maritime filed for Bankruptcy in the Northern District of Mississippi. These agreements have been approved by the Bankruptcy Court and the decision is on appeal to the federal district court. Havens *et. al* v Maritime, U.S. District Court, Northern District of Mississippi, Aberdeen Division, Case No. 1-13-cv-00180 (lead case).

Moreover, DEMCO's use of these channels has evolved significantly in the 3 ½ years since the Commission issued its HDO. The AMTS channels in this proceeding have been combined with DEMCO's existing, nearby 220 MHz Band channels as an integral part of a two million dollar upgrade of DEMCO's communication's facilities designed for the specific purpose of promoting the public's safety.[8] Without the use of the AMTS channels this emergency response system will be severely compromised. This new information regarding actual use of these frequencies fully warrants reconsideration by the Commission.[9]

As a procedural matter, the Commission's decision that DEMCO lacks standing under the Rules to complain of being forced to participate in an FCC hearing is wrong. According to the MO&O, only those *excluded* from a hearing (not forcibly *included* in one) have been adversely affected and have standing to complain. Not surprisingly, however, FCC precedent shows that being forced *into* a hearing is every bit as "adverse" as being kept *out* of it. DEMCO's HDO Reconsideration and later additional materials should now be considered fully by the Commission, not dismissed out of hand with accompanying dicta.

The Commission's summary dismissal of DEMCO's HDO Reconsideration as primarily business (and not public-safety) related, is factually wrong and must be corrected. DEMCO's AMTS system is essential for the protection of human life and property under circumstances where a failure in communications can have catastrophic consequences.

---

[8] DEMCO has maintained channels in the 220 to 222MHz band since before the turn of the Century. However, the band plan for this band by itself is of limited value since it only allows operations at 5 KHz (unless you have access to the adjacent two channels to allow operations at 12.5 KHz channel spacing). The additional AMTS frequencies at issue in this proceeding have allowed DEMCO to expand critical operations throughout the DEMCO service area.

[9] 47 C.F.R. §1.106.

II. HEARING PROCEEDINGS

a. Hearing Designation Order

On April 19, 2011, the Commission released the HDO designating for hearing certain issues regarding MCLM's qualifications to remain a Commission licensee.[10] The pending applications filed by twelve critical infrastructure entities (four oil and gas companies, seven electric utilities, and one railroad) to acquire small portions of Maritime's spectrum in certain limited areas were swept into the hearing despite the fact that the HDO contained no allegations of wrongdoing against any of them.

In a footnote to the HDO, the Commission permitted only the railroad (the Southern California Regional Rail Authority or "SCRRA") to show why its application should be "removed from the ambit of the hearing proceeding and granted" due to the public safety implications of Positive Train Control ("PTC").[11]

b. Petition for Reconsideration

On May 19, 2011, nine of the critical infrastructure entities (the "CII Petitioners"), including DEMCO, filed the HDO Reconsideration supporting the removal of SCRRA from the hearing but questioning why the CII Petitioners' applications were treated differently.[12] DEMCO and the other CII Petitioners argued that their requirements for this spectrum were as critical as SCRRA's, and they, too, should have the opportunity to remove their applications from the hearing. They pointed out that railroads, electric utilities, and oil and gas companies are all defined as Critical Infrastructure Industries under the Commission's rules and decisions; all require spectrum to comply with regulatory mandates; all would use the spectrum to support

---

[10] *HDO.*

[11] *Id* at *fn* 7.

[12] *Petition for Reconsideration.*

critical and innovative new applications in the public interest; all face constraints in obtaining suitable spectrum; and all acted in good faith in their dealings with MCLM.

c. Repeated Requests for Expedited Action

Receiving no response to their HDO Reconsideration, DEMCO and the other CII Petitioners filed a Request for Expedited Action on July 15, 2011, urging grant of their applications and seeking clarity and guidance before making more substantial investments in deploying systems on the AMTS spectrum.[13] Almost one year later, on June 27, 2012, they filed a Second Request for Expedited Action.[14] On May 8, 2014, they sent a letter to the Chief, Wireless Telecommunications Bureau, again urgently requesting their HDO Reconsideration be granted.[15] On June 20, 2014, they sent a letter to the Chairman yet again urgently requesting grant of the pending HDO Reconsideration.[16]

The Commission never responded to any of these requests. Over the intervening 3 ½ years, DEMCO continued to invest in its AMTS network designed for critical public safety initiatives.

DEMCO was not the only one concerned with the Commission's lack of action. At a prehearing conference in this proceeding, the Administrative Law Judge graphically acknowledged the applicants' frustration but determined "his hands are tied" since only the Commission itself has the authority necessary to approve the applications outside the hearing.[17]

---

[13] *CII Companies' Request for Expedited Action*, filed July 15, 2011 (EB Docket No. 11-71).

[14] *CII Companies' Request for Expedited Action*, filed July 15, 2011 (EB Docket No. 11-71).

[15] *CII Companies' Letter to Roger Sherman*, filed May 8, 2014 (EB Docket No. 11-71).

[16] *CII Companies' Letter to Chairman Tom Wheeler*, filed June 20, 2014 (EB Docket No. 11-71).

[17] "I'm trying to think if there is anything it's possible that I can do, and I'm, honestly, my hands are tied. And I know the frustration. I mean, I can't believe that what I'm hearing here is that you've got such public interests hanging around… I'm frustrated. I don't know what I would do if I were in your situation. I don't know what you should do." *See*, Transcript of October 25, 2011, Hearing at p. 266 available at http://apps.fcc.gov/ecfs/document/view?id=7021747027 (last visited Oct. 6, 2014).

d. Memorandum Opinion and Order

On September 11, 2014, long after the CII Petitioners filed their HDO Reconsideration, the Commission released its MO&O summarily dismissing it on the grounds the HDO was an interlocutory ruling. Noting that the HDO did not limit the ability of the CII Petitioners to participate in the hearing, the Commission concluded they were not adversely affected by the ruling for purposes of requesting reconsideration of the HDO.[18] According to the Commission, only those *excluded* from a hearing (not forcibly *included* in a hearing) have standing to complain. As discussed more fully below, however, under FCC precedent the HDO Reconsideration was not interlocutory in nature. The Commission should have addressed the merits of DEMCO's HDO Reconsideration rather than summarily dismissing it.

In dicta, the MO&O recognized the electric utilities and oil and gas companies "require spectrum to comply with regulatory mandates, would use the spectrum to support critical and innovative new applications in the public interest, face constraints in obtaining suitable spectrum, and acted in good faith in their dealings with MCLM,"[19] but nevertheless denied their HDO Reconsideration and insisted again that only SCRRA's operations were sufficiently public-safety oriented as to qualify for removal from the MCLM hearing. Like SCRRA, however, DEMCO also primarily needs this spectrum for public safety related purposes, involving the prevention of human injury and protection of property.

[18] MO&O at ¶35, citing Section 1.106(a)(1) of the Rules.

[19] 47 C.F.R. §1.106(a)(1) (2013).

III. ARGUMENT

The dismissal of the *HDO Reconsideration* was in violation of the Commission's procedural rules and well established precedent. It should be reinstated and formally considered along with new information further demonstrating DEMCO's use of these frequencies is primarily public safety related. The loss of these channels – with no readily available replacements – would result in great risk to public safety.

a. The Commission's Failure to Consider the HDO Reconsideration was a Procedural Error Warranting Correction

Section 1.106 (a) (1) of the Commission's rules states that "[a] petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding."[20] Oddly, in the instant case, the Commission concluded that *forcing* a party to participate in the hearing (as opposed to *excluding* a party from a hearing) is not "an adverse ruling" since the party's ability to participate in the hearing is not limited. Of course, that conclusion is misplaced in this case, since the parties were not complaining that they had been denied the opportunity to participate in the hearing. Rather, the complaint was that they were being unfairly forced to participate in the hearing.

The Commission's decision not only ignores the plain meaning of an "adverse ruling" (since being required to do something one does not wish to do is easily deemed adverse) but is contrary to long established precedent. In *Western States Telephone Company et al.*, a party filed a petition for reconsideration of a designation order and sought to be removed from the hearing.[21] Citing to the same rule, Section 1.106 (a) (1), the Commission ruled: "[w]e will

---

[20] *Id*, emphasis added.

[21] *Western States Telephone Company et. al,* 66 FCC 2d 370 (1977).

entertain the petition because it involves an alleged adverse ruling respecting petitioner's participation in the hearing. *See,* Section 1.106(a)(1) of the Rules."[22] This clear, unambiguous conclusion by the Commission should come as no surprise, since being forced *into* a hearing is certainly as "adverse" as being kept *out* of it.[23]

The Commission should reverse its procedural error and formally consider the HDO Reconsideration. In so doing, the Commission should take into consideration the new facts and information, detailed below, occurring after the initial filing that further establish the public-safety implications of DEMCO's use of these frequencies and the clear public interest in removing DEMCO as a party and allowing it to prosecute its application outside the ambit of the hearing.[24]

b. New Information not Available at Time of the HDO Reconsideration Shows DEMCO is Using AMTS Spectrum for Public Safety-Related Purposes

In the past three years, DEMCO has spent approximately $2 million to upgrade its AMTS network for the specific purpose of responding to public safety emergencies relating to the protection of life and property. The network has enabled DEMCO within the three and one-half year period to provide reliable service to the public during critical emergency situations, such as power outages, downed power lines and storm recovery operations.

The combination of DEMCO's existing 220 MHz channels with the nearby AMTS frequencies at issue in this proceeding allows for design of an efficient system suitable for emergency voice communications throughout the DEMCO service area that otherwise would not

---

[22] *Id,* at ¶ 3.

[23] The adversity of the party status ruling is highlighted by the fact that SCRRA is now free to prosecute its application on a "fast track" free of the hearing while the CII parties remain entrenched in an on-going complex hearing proceeding with no end in sight. Moreover, unlike the party removed the hearing, the parties forced to remain will have their assignment applications reviewed under a more stringent standard as these applications are tied to the character qualifications of MCLM.

[24] 47 CFR § 1.106 (c) (1) and (c) (2).

be possible. This upgrade has been designed to fit the technical specifications applicable to these frequencies. If DEMCO is forced to dismantle its emergency response system, it would result not only in a tragic loss of public safety communications capabilities but an unnecessary waste of resources.

As part of the major expansion of its emergency communications capabilities and in reliance on the availability of the AMTS frequencies, DEMCO installed five sites in its MPT 1327 network. Currently, DEMCO is operating over 40 repeaters at these five sites. It has also developed plans to operate an additional 8 repeaters at a sixth site.

DEMCO constructed a new tower at its headquarters to allow operations and coverage that is optimized to the AMTS band. Another tower was built at French Settlement, LA, to facilitate operations in this band. This tower is not suitable for operations at higher frequencies due to the low tower height and the different propagation characteristics of the AMTS band as compared to other bands such as the UHF band. In fact, due to existing restrictions at the site it is not even possible to construct a higher tower at this location. Sufficient UHF channels are not available in DEMCO's service area for effective use in the emergency response network..[25]

Other major expenditures incurred by DEMCO as part of its emergency response AMTS expansion includes funding for the remodeling and strengthening of an existing tower at Greensburg, LA to allow installation of backhaul and an expansion of antennas. DEMCO also installed microwave backhaul at several sites and added Automatic Vehicle Location equipment in all of its vehicles to promote safety and increase efficiency. The cornerstone of this entire upgrade for emergency response is the availability of the AMTS frequencies.

[25] DEMCO attempted to obtain UHF channels but was only able to get 3 channels for sole use operations on three frequencies within the DEMCO service area. This makes the operation at this band severely compromised as the MPT 1327 system does not provide proper operation without at least one FB8 channel on *all* sites.

The AMTS channels not only have made possible critical voice communications during emergencies, throughout the DEMCO service area, they make possible the use of existing 220 MHz channels for DEMCO to use in its SCADA operations for monitoring and control of the electric grid, itself an important public safety use of this spectrum. Sufficient channels to allow DEMCO to perform all necessary SCADA operation are not available in other bands. .

A power failure is a public safety event under any circumstances. In particular, a power failure from a terrorist attack would greatly endanger the national security of the United States and should be a major public interest concern of the Commission. DEMCO requires the use of the AMTS frequencies for its continuing SCADA operations to monitor its operations and prevent power outages. This continuing SCADA operation serves to protect the public's safety and the national security of the country.

c. Recent Congressional and Public Safety Developments Highlight DEMCO's Need for the AMTS spectrum.

Legislation adopted since DEMCO filed its HDO Reconsideration, the subsequent lessons of Hurricane Sandy, and a recent study on the Health Effects of Emergency Situations, are just a few examples of developments highlighting the importance of reliable communications in the energy industry, supporting DEMCO's use of the AMTS frequencies for public safety purposes.

(i) Congressional Intention to Satisfy all Public Safety Needs

In 2012, Congress specifically recognized the critical shortage of spectrum to meet the growing needs for public safety communications, including the public safety communications requirements of the nation's utilities. To address the existing deficiency in spectrum, Congress passed legislation allocating 20 MHz of 700 MHz spectrum for public safety use under a single nationwide license.[26] The legislation recognizes the public safety requirements of CII entities

[26] The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (the " Spectrum Act")

and authorizes priority communications status on this network for utilities in meeting their public safety functions.[27] In furthering the Congressional intent to meet these public safety requirements, FirstNet, the nationwide licensee, proposes to classify utilities as "public safety entities." [28]

While this legislation eventually may help provide a long term solution to the spectrum shortage for some CII entities, it does little to meet their immediate need for spectrum necessary for the protection life and property. In the short term, this legislation demonstrates the clear intent of Congress to ensure adequate spectrum is available to support the nation's public safety needs, including those of the nation's critical infrastructure users.

Unfortunately, it is widely anticipated that the FirstNet 700 MHz Public Safety Broadband Network will not be available for public safety use for at least three to four years.[29] The spectrum shortage for CII entities is ongoing and any Commission action that creates uncertainty or otherwise disrupts existing public safety usage is contrary to the public interest and the intent of Congress.

(ii) Lessons Of Hurricane Sandy

The importance of using hardened internal communications systems for DEMCO and other CII entities to respond to life threatening situations is further highlighted by recent natural disasters, such as Hurricane Sandy. In October 2012, Sandy "damaged hundreds of thousands of homes, forced tens of thousands of survivors into shelters and caused billions of dollars in

---

[27] Section 6001 (26) of the Spectrum Act, adopts an inclusive definition of public safety; See *79 Fed Reg 57058,* Sept. 24, 2014, at 57060-57062

[28] *79 Fed Reg 57058,* Sept. 24, 2014, at 57060-57062.

[29] FirstNet has only recently begun t the State consultation process as required by the legislation. In order to develop an operational plan FirstNet must first consult with each of 56 states and territories. This process is expected to take at least 18 months. In addition, FirstNet is required by the statute to release an RFP or RFPs for design of the network, This process could take approximately three to four years before vendors are selected.

damages."[30] Damage occurred to "vital infrastructure systems including power transmission, transportation and water and sewage treatment facilities. As a direct result of the storm, 73 people lost their lives."[31]

During this natural disaster, which impacted large population centers up and down the east coast, approximately 25 percent of cell towers were knocked out of service.[32] This event demonstrates that when life-protecting emergency communications are most needed by CII entities, commercial networks alone cannot be relied upon. Without sufficient internal spectrum capacity during critical times of emergencies, CII entities will not be able to provide the vital services necessary to protect human life and preserve property. DEMCO, like other utilities, requires direct control over its key communications systems. In fact, DEMCO has in the past experienced similar issues with the reliability of commercial networks at critical times.

Following the tragic events caused by Hurricane Sandy, President Obama called for utility workers to be treated as first responders during future emergencies.[33] The Commission cannot ignore the painful lessons of Sandy by denying DEMCO vital spectrum needed to protect safety of life and preserve property.

(iii) New Study On Health Effects of Emergency Situations

As the Commission knows, response time for CII entities is critical in an emergency situation. In order to shorten response times, sufficient communications capabilities are essential. The longer an emergency persists, the greater the likelihood of loss of life from

---

[30] http://www.fema.gov/sandy-recovery-office. "About us the Sandy Recovery Office."

[31] *Id.*

[32] http://www.usatoday.com/story/news/nation/2012/10/30/hurricane-sandy-wireless-cellphone-outage/1669921/; *USA Today,* "FCC:25% of cell towers, broadband down in 10 states"

[33] http://politicalticker.blogs.cnn.com/2013/05/08/president-electric-industry-plan-ways-to-restore-power/ CNN "*President, electric industry plan ways to restore power.*"

accidental causes as well as from non-accidental causes attributable to stress and other medical conditions. New health data supports the importance of efficient responses by utilities during emergencies, such as power outages.

A 2012 study by researchers from Yale and Johns Hopkins, clearly demonstrates the relationship between power outages and mortality rates.[34] The study found that disease-related and accidental deaths both increased significantly during the largest blackout in U.S. history.[35] During the blackout, accidental deaths increased by 122% when compared to non-blackout periods. Disease-related deaths increased by 25%.

Usually, death tolls from disasters only include accidents, which can be directly connected to the event.[36] However, as shown by this study, this approach greatly discounts the severe stress on health from emergency situations, such as blackouts and other potential natural or man-made disasters. [37]

Lives clearly are at stake when the nation's critical infrastructure is compromised and commercial communications networks are inoperable. The Commission must take into account this newly emerging data linking disasters and the devastating impact on human life in evaluating the critical public safety functions of DEMCO and other CII users.

---

[34] G. Brooke Anderson and Michelle L. Bell, "Lights Out: Impact of the August 2003 Power Outage on Mortality in New York," Toxicology 23, no. 2 (2012): 1-5.

[35] https://environment.yale.edu/yer/article/the-true-cost-of-power-outages: "The True Cost Of Power Outages" by Kathryn Siegel. August 2012, "Being afraid of the dark is apparently justified" Yale Environmental Review

[36] *Id.*

[37] *Id.*

IV. DEMCO's Application Should be Treated Similarly to SCRRA's and Removed from the Hearing

SCRRA and DEMCO are both defined as critical infrastructure entities under the Commission's rules,[38] and both are using their AMTS frequencies for essential public-safety purposes. Having permitted SCRRA to remove itself from the hearing due to the public safety implications of its operations on these frequencies, the Commission must afford DEMCO the same opportunity.[39]

The Commission is well aware "of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment."[40] Significantly, the Commission must "do more than enumerate factual differences, if any… it must explain the relevance of those differences to the purposes of the Federal Communications Act."[41] In this instance, the Commission's analysis that SCRRA and DEMCO are not "similarly situated" is fundamentally flawed.

In its misguided attempt to distinguish between the two public safety services, both of which are intended to protect human life, the Commission relied on the erroneous premise that "unlike PTC, those other services are not dedicated to communications to prevent human injury and property damage, but are also used for day-to-day facilities management and other purposes that primarily serve the business needs of the licensee."[42] As demonstrated herein, however, the primary use of the spectrum by DEMCO is for public safety purposes. Any "business" use is incidental, just as with PTC.

---

[38] 47 C.F.R. §90.7 (2013).

[39] *See, e.g., Melody Music, Inc. v. FCC,* 120 U.S. App. D.C. 241, 345 F. 2nd 730 (D.C. Cir. 1965); *Garrett v. FCC,* 513 F2d 1056 (D.C. Cir. 1975).¶

[40] *McElroy Elec. Corp.*, 990 F.2d at 1365.

[41] *Melody Music Inc.*, 345 F.2d at 733.

[42] *MO&O,* at ¶ 36.

A report funded by the Federal Railroad Administration ("FRA") documents the business applications incidental to PTC.[43] "The Congress of the United States then directed FRA to conduct a separate evaluation of the business benefits of PTC. These are the savings railroads (and shippers) might expect to see if PTC is deployed on the U.S. railroad network. Examples of potential business benefits include:

- line capacity enhancement
- improved service reliability
- faster over-the-road running times
- more efficient use of cars and locomotives (made possible by real-time location information)
- reduction in locomotive failures (due to availability of real-time diagnostics)
- larger "windows" for track maintenance (made possible by real-time location information)
- fuel savings"[44]

The Commission's only other attempted justification to distinguish the two public safety services – that SCRRA has a statutory mandate to implement PTC – is equally flawed. Congress did not allocate or mandate any specific spectrum for use by PTC. Nor is there is any indication Congress intended the service to be implemented in preference to other vital public safety services that also play a critical role in protecting human life and preserving property. Granting DEMCO's application will not prejudice SCRRA or any other public safety applicant.

The Communications Act requires the Commission to make available a communications system "for the purpose of promoting safety of life and property."[45] DEMCO's use of this

---

[43] POSITIVE TRAIN CONTROL (PTC): CALCULATING BENEFITS AND COSTS OF A NEW RAILROAD CONTROL TECHNOLOGY by Randolph R. Resor, Vice President Costing and Economic Analysis, ZETA-TECH Associate Michael E. Smith, Senior Project Manager, Wilbur Smith Associates, Pradeep K. Patel, Project Manager, ZETA-TEC Associates, July 30, 2004.

[44] *Id,* at p.2

[45] 47 U.S.C. §151.

AMTS spectrum to respond to public safety emergencies including power blackouts to promote safety of life and protect property is entirely consistent with that statutory mission.

Accordingly, the Commission historically has treated railroads, utilities, and oil and gas companies equally with respect to the assignment of spectrum. In adopting rules implementing Sections 309(j) and 337 of the Communications Act, the Commission recognized that, "Congress deemed utilities, railroads, metropolitan transit systems, and pipelines to be entities that protect the safety of life, health, or property for purposes of public safety radio services."[46] When the Commission elevated SCRRA's application in the HDO based on a statutory mandate for PTC, the agency created a distinction where no substantive difference exists and arrived at a result not intended by Congress or justified under the Communications Act.

DEMCO's AMTS system is dedicated to communications to prevent human injury and property damage. Its application, like SCRRA's, should be removed from the hearing and granted.

V. CONCLUSION

As demonstrated above, the HDO was adverse to DEMCO. Under Commission precedent, DEMCO's HDO Reconsideration requesting that its application be removed from the hearing and granted was not interlocutory in nature. It should now be fully considered by the Commission in light of developments in the intervening years.

DEMCO needs these frequencies for emergency responses to power outages, downed power lines and other public safety events to protect human life and property. Beyond any doubt,

---

[46] *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies: Establishment of Public Safety Radio Pool in the Private Mobile Frequencies Below 800 MHz;* Petition for Rulemaking of the Mobile Telecommunications Association, WT Docket No. 99-87, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22709, at ¶80 (2000).

these frequencies do not primarily serve DEMCO's business needs, as the Commission erroneously concluded.

The Commission should take this opportunity to correct its procedural error, recognize the obvious public-safety merits of DEMCO's request, remove the company's application from the hearing and grant it after almost four years.

Respectfully submitted,

DIXIE ELECTRIC MEMBERSHIP CORPORATION

Albert J. Catalano

By: Jack Richard
Albert J. Catalano
Keller and Heckman LLP
1001 G St, NW, Suite 500W
Washington, D.C. 20001
(catalano@khlaw.com; 202.434.4207)
Its Attorneys

October 14, 2014

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Application to Assign Licenses to Choctaw Holdings, LLC	)	WT Docket No. 13-85 FCC File No. 0005552500
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Applications to Modify and to Partially Assign License for Station WQGF 318 to Southern California Regional Rail Authority	)	FCC File Nos. 0004153701 and 0004144435
	)	
Application for New Automated Maritime Telecommunications System Stations	)	FCC File No. 0002303355
	)	
Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FCC File Nos. 0004030479, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

AFFIDAVIT OF JOHN VRANIC

I, JOHN VRANIC, CEO and General Manager of Dixie Electric Membership Corporation ("DEMCO") hereby affirm that I have reviewed the Petition For Reconsideration in the captioned matter and to the best of my knowledge, information and belief the facts and information relating to DEMCO's operations, infrastructure and investments contained therein are true and accurate.

John Vranic
CEO and General Manager

STATE OF LOUISIANA
CITY/COUNTY/PARISH OF East Baton Rouge, to wit:

Subscribed and sworn to on this 14th day of October, 2014, by John Vranic, CEO and General Manager of Dixie Electric Membership Corporation, the above-named Affiant, before me.

My Commission expires on: At Death

Anita P. McNeal
Notary Public #85441

CERTIFICATE OF SERVICE

I, Beverly Harding, hereby certify that on this 14th of October, a copy of the foregoing Petition for Reconsideration was filed with the Commission, served on the parties listed below via First Class U.S. Mail and a courtesy copy was provided via electronic mail.

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Richard Sippel Richard.Sippel@fcc.gov
Patricia Ducksworth Patricia.Ducksworth@fcc.gov
Austin Randazzo Austin.Randazzo@fcc.gov
Mary Gosse Mary.Gosse@fcc.gov

Jeffrey L. Sheldon
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
sheldon@lb3law.com
Counsel for Puget Sound Energy, Inc

Pamela A. Kane
Michael Engel
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, DC 20554
Pamela.Kane@fcc.gov

Charles A. Zdebski
Eckert Seamans Cherin & Mellott, LLC
171.7 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
czdebski@eckertseamans.com
Counsel for Duquesne Light Co.

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, VA 22314

Paul J. Feldman
Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street —11th Floor
Arlington, VA 22209
feldman@fhhlaw.com
cole@fhhlaw.com
Counsel for Southern California Regional Rail Authority

Dennis C. Brown
8124 Cooke Court
Suite 201
Manassas, VA 20109
d.c.brown@att.net
Counsel for Maritime Communications/ Land Mobile LLC

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033
rjk@telecomlaw.com
Counsel for Maritime Communications/Land Mobile LLC

Robert G Kirk
Wilkinson Barker Knauer, LLP
2300 N Street, NW Suite 700
Washington, DC 20037
RKirk@wbklaw.com
Counsel for Choctaw Telecommunications, LLC and Choctaw Holdings, LLC

Warren Havens
Jimmy Stobaugh
GM Skytel Entities
2509 Stuart Street
Berkeley, CA 94705
Warren.havens@sbcglobal.net
jstobaugh@telesaurus.com

Matthew J. Plache, Esq.
Law Office of Matthew J. Plache
5425 Wisconsin Ave.
Suite 600, PMB 643
Chevy Chase, MD 20815
Matthew.plache@plachelaw.com
Counsel for Pinnacle Wireless Corp.

James A. Stenger
Chadbourne & Parke LLP
1200 New Hampshire Ave. NW
Washington, DC 20036
jstenger@chadbourne.com
Counsel for Environmentel LLC and Verde Systems LLC

Beverly Harding

Beverly Harding