

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC      EB Docket No. 11-71  
File No. EB-09-IH-1751  
Participant in Auction No. 61 and Licensee of      FRN: 0013587779  
Various Authorizations in the Wireless Radio Services

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| Applicant for Modification of Various<br>Authorizations in the Wireless Radio<br>Services | Application File Nos.<br>0004030479, 0004144435,<br>0004193028, 0004193328, |
| 0004354053, 0004309872,<br>Applicant with ENCANA OIL AND GAS (USA), INC.;                 | 0004310060, 0004314903,   |
| DUQUESNE LIGHT COMPANY;   | 0004315013, 0004430505,   |
| DCP MIDSTREAM, LP;  | 0004417199, 0004419431,   |
| JACKSON COUNTY RURAL MEMBERSHIP<br>ELECTRIC COOPERATIVE;                                  | 0004422320, 0004422329,<br>0004507921, 0004153701,                          |
| PUGET SOUND ENERGY, INC.;   | 0004526264, 0004636537,<br>and 0004604962.                                  |
| ENBRIDGE ENERGY COMPANY, INC.;  |   |
| INTERSTATE POWER AND LIGHT COMPANY;   |   |
| WISCONSIN POWER AND LIGHT COMPANY;  |   |
| DIXIE ELECTRIC MEMBERSHIP CORP., INC.;  |   |
| ATLAS PIPELINE—MID CONTINENT, LLC;  |   |
| DENTON COUNTY ELECTRIC COOPERATIVE,<br>INC., d/b/a COSERV ELECTRIC; and                   |   |
| SOUTHERN CALIFORNIA REGIONAL RAIL<br>AUTHORITY  |   |

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENL-VSL Motion For Summary Decision on Issue (g)**

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## SUMMARY OF ARGUMENT

Now that direct cases, including evidence, has been submitted, it is an appropriate time for this motion for summary decision.<sup>1</sup> Maritime discontinued service at all 16 of the site-based stations or locations that are the remaining subject of Issue (g) (the “Stations”). Maritime admits it abandoned operations at all of the Stations no more recently than in year 2007, but alleges there was no permanent discontinuance based on its mental state. Maritime then entered into agreements to sell, and allegedly to lawfully lease, spectrum in the authorizations to Puget Sound Energy (“PSE”), Evergreen School District (“ESD), Duquesne Light Company (“Duquesne”) and Pinnacle Wireless, as the alleged intermediary for State of New Jersey entities New Jersey Turnpike Authority (“NJTA”) and New Jersey Sports and Exposition Authority (“NJSEA”) (collectively “Pinnacle-NJ”). None of them are operating at any of the Stations nor have any cognizable plans to do so, and FCC records show that PSE, ESD, Duquesne, NJTA and NJSEA all have other spectrum for their needs. The 16 Stations are permanently discontinued and abandoned. Under applicable law, including §1.955(a), they are automatically terminated.

To attempt to forestall this inevitable conclusion, consummate sales or continue leasing terminated and invalid spectrum to PSE, ESD, Duquesne and Pinnacle-NJ, to the extent the agreements have not already been terminated, a novel legal theory is advanced by Maritime that

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<sup>1</sup> *E.g., In re Application of Telephone and Data Systems*, FCC 95D-12. 10 FCC Rcd 10518, 1995 FCC LEXIS 6387 (Sept. 27, 1995) (“After the admission of the written direct cases in this proceeding, TDS, USCC and the Wireless Telecommunications Bureau (Bureau) jointly move for the issuance of a summary decision on the above set forth Issues based upon the written direct cases.”); *In re La Star Cellular*, FCC 96-3, 11 FCC Rcd 1059, 1996 FCC LEXIS 245 (Jan. 23, 1996) (“Following discovery and the Bureau's issuance of a bill of particulars, the parties exchanged their written direct cases....The Bureau then joined with TDS and USCC in a joint motion for summary decision.”) EVH reserves its right to object to any of the direct case testimony and documents of the Bureau/Maritime. This motion assumes the Presiding Judge decides to accept those items into the record.

alleged fill-in station operations of PSE, ESD, Duquesne and Pinnacle-NJ somehow operate to preserve the Station authorizations. This novel legal theory is directly contrary to the holding of the Wireless Telecommunications Bureau (WTB) in *Northeast Utilities* and other law that fill-in stations cannot and do not count as continuance of operation of the authorized site-based station. Indeed, the WTB further held in *Northeast* that so-called fill-in stations are not even authorized where there is no existing site-based system.

Even if Maritime's novel legal theory on fill-in stations were not directly contrary to settled law, the facts to support that theory are completely absent in this case. PSE is not operating and does not even claim to be operating fill-in stations. PSE is the geographic area licensee and is operating a PLMRS system under its co-channel geographic AMTS licenses.

Duquesne admits it ceased operating any facilities using Maritime spectrum as long ago as 2012. Duquesne is using other spectrum, such as 900 MHz spectrum, as reported to the State of Pennsylvania PUC. Evergreen School District (ESD) also admits it ceased all operations on Maritime spectrum, and indeed is not using any of this AMTS 220 MHz-range spectrum as of September 7, 2014.

Only Pinnacle claims to operate what it erroneously and unlawfully characterizes as fill-in stations. Pinnacle's alleged but unauthorized PLMRS system does not qualify as lawful AMTS fill-in stations because Pinnacle-NJ admits there are no existing site-based Stations and no plans to reactivate them. Indeed, Pinnacle admits that any resumption of operations at the site-based Stations would interfere with its stations. These alleged Pinnacle-NJ stations cannot be deemed to be fill-in stations because fill-in stations are only authorized within the service contours of an existing licensed station, or system of stations, and there are none. The NJTA

and NJSEA radio-system uses are for public safety and have access to 800 MHz and other public-safety-reserved spectrum and have no need to use the former Maritime spectrum.

In sum, the direct case of the Bureau and Maritime show no basis for a hearing on Issue (g). Service at all 16 Stations was permanently discontinued. Maritime's call for a hearing is based entirely on fill-in stations. But there are no operations that could conceivably be called fill-in stations with respect to the 7 locations on KAE889 in the Pacific Northwest, since PSE operates geographic area license stations and ESD discontinued any 220 MHz operations. Likewise Duquesne admits it discontinued any operations that could be characterized as fill-in stations and is not using any Maritime spectrum under WHG750. The 8 locations on WRV374 also must be held to be permanently discontinued and cancelled, notwithstanding Pinnacle's claim to operate fill-in stations because Pinnacle admits there is no existing site-based system and no plans to reactivate one.

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**ENL-VSL MOTION FOR SUMMARY DECISION ON ISSUE (G)**

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”), through their undersigned counsel, hereby move for summary decision under Rule 1.251 on Issue (g).

Mr. Havens joins in this filing (collectively “EVH”). This motion is being filed more than 20 days prior to the hearing. Moreover, this motion is based on new information and could not have been filed earlier, namely the direct cases filed by the Enforcement Bureau (“Bureau”) and Maritime Communications/Land Mobile, Inc. (“Maritime”).

**I. ISSUE (G) IS APPROPRIATE FOR SUMMARY DECISION AT THIS TIME**

There are three fact patterns presented with regard to Issue (g) and the 16 disputed stations. Seven of the stations are located in the Pacific Northwest, within the service territory of Puget Sound Energy (“PSE”) and are locations listed on KAE889. One station is located within the service territory of Duquesne Light Company (“Duquesne”) and is on WHG750. The third group of eight stations is on WRV374 and involves Pinnacle Wireless (“Pinnacle”) and New Jersey state entities.

Direct case testimony from PSE was not provided by Maritime, the Bureau or PSE itself. The absence of direct case testimony from PSE does not, however, leave us without factual allegations. PSE answered two sets of interrogatories from the Bureau. We use those PSE answers for purposes of this motion. The Bureau provided direct written testimony from Evergreen School District (“ESD”), Duquesne and Pinnacle. We use that testimony for purposes of this motion.

EVH reserves its rights to cross-examine and otherwise challenge the accuracy of the PSE interrogatory answers and the ESD, Duquesne and Pinnacle written testimony. However, EVH assumes, solely for purposes of this motion, that the facts alleged in the PSE answers and

the ESD, Duquesne and Pinnacle written testimony are undisputed. Based upon those assumed facts, the Presiding Judge must conclude that all 16 authorizations are permanently discontinued and automatically terminated under applicable law. Therefore, there is no need for a hearing and summary decision is appropriate without requiring that EVH dispute and disprove any of the allegations offered by PSE, ESD, Duquesne and Pinnacle.

## **II. THE APPLICABLE LEGAL STANDARD IS CLEAR AND INDISPUTABLE**

The Commission decided to transition the AMTS band to geographic area licensing. This licensing regime allows the use of modern, cellular technology, based on low power/low site facilities that efficiently reuse the spectrum, like other cellular radio systems, and cause less interference to adjacent television stations. Under geographic licensing, stations can be placed anywhere within the geographic service area, without specific site-based authority.<sup>2</sup>

Geographic area licensees are required to protect incumbent site-based licensees.<sup>3</sup> But geographic area licensees are only required to protect the actual service contours of site-based stations, not their licensed parameters.<sup>4</sup> An incumbent licensee's contours cannot be expanded or moved.<sup>5</sup> Where an incumbent site-based licensee discontinues operations, the spectrum reverts to the geographic licensee.<sup>6</sup>

Summary decision is appropriate where the assumed undisputed facts show no actual service offered at any of the 16 station locations that are the subject of Issue (g). Furthermore,

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<sup>2</sup> Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685 (2002)(“Fifth Report and Order”), paras. 23-26.

<sup>3</sup> Fifth Report and Order at paras. 30-35.

<sup>4</sup> Dennis C. Brown, Letter Ruling, 24 FCC Rcd 4135 (Apr. 8, 2009); aff'd on reconsideration, Maritime Communications/Land Mobile, LCC, [DA 10-664] (Apr. 19, 2010).

<sup>5</sup> Fifth Report and Order at para. 34.

<sup>6</sup> Id.

summary decision is appropriate where the assumed undisputed facts show no plans to resume operations at any of the 16 sites.

It is undisputed that Maritime discontinued provision of service at the 16 locations that are the subject of Issue (g) and decided to sell/lease the spectrum to third parties, namely PSE, Duquesne and Pinnacle. It also is undisputed that PSE, Duquesne and Pinnacle are not providing service from any of the 16 locations, nor do they plan to in the future.

Thus, the undisputed facts show that in the Pacific Northwest area that involves KAE889 and in the Mid-Atlantic area that involves WHG750 and WRV374, no service is provided or planned at any of the 16 authorized locations. Under the rules that govern AMTS under geographic licensing, Maritime lost its rights to protection of its legacy site-based authorizations and the spectrum reverted to the geographic area licensee.

**A. The Northeast Utilities and Mobex Cases Mandate Summary Decision**

In *Northeast Utilities Service Company*, 24 FCC Rcd 3310, DA 09-643 (Mar. 20, 2009), the Wireless Telecommunications Bureau (WTB) had to decide whether destruction of the World Trade Center resulted in permanent discontinuance and cancellation of the site-based AMTS station WQA216 licensed to Paging Systems, Inc. (“PSI”), and whether Northeast Utilities Service Company (“NUSCO”), the geographic area licensee, no longer was required to protect the PSI site-based authorization.

The WTB concluded that it would not retroactively apply to Part 80 licensees the discontinuance of service rules in other rule parts which set time limits for discontinuance of service.<sup>7</sup> WTB went on to state that in the absence of a specific time limit being applied

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<sup>7</sup> Note that this decision was released in 2009, so to the extent that Maritime discontinued service after that date, application of a time limit to Maritime would not involve retroactivity and Maritime would be on fair notice. The rules have various time limits for discontinuance of

retroactively to Part 80 AMTS licensees, the WTB would “evaluate claims of permanent discontinuance on a case-by-case basis.”<sup>8</sup> PSI claimed that it intended to restore service and was looking for an alternative site. By contrast, Maritime attempt to sell/lease its site-based authorizations to PSE, Duquesne and Pinnacle and each of them states that they are not providing service from the former Maritime sites and have no plans to do so.

In the *Northeast Utilities* case the loss of the site was involuntary and PSI involuntarily discontinued service while it attempted to resume operations at a replacement site. One of Maritime’s 16 sites was located at the World Trade Center. But Maritime voluntarily discontinued service at the other 15 disputed locations.

Under *Northeast Utilities* involuntary loss of a site and efforts to restore service saved PSI from a finding of permanent discontinuance. Maritime’s voluntary discontinuance of service at 15 sites with no plans to resume service must be judged to fail to meet that standard.<sup>9</sup> Where the discontinuance of service at 15 of the disputed sites was voluntary, Maritime has no plans to resume operations, contracted to sell the authorizations to PSE, Duquesne and Pinnacle, who are not using those sites and have no plans to use them, the Presiding Judge must conclude that

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service, but none allow discontinuance for more than a year. Maritime cannot dispute that the 16 stations have been out of service for more than a year. However, the Presiding Judge need not rely on this, since even under a case-by-case analysis with no set time limits, summary decision is required.

<sup>8</sup> *Northeast Utilities* at para. 10.

<sup>9</sup> Financial or other inability is treated the same as voluntary lack of compliance with threshold requirements of construction and operation, e.g., see §1.946(e). This rule also shows the difference between involuntary and voluntary failure to construct and commence operations, which continues with regard to loss of operation. It further shows the need to act timely to secure operations (§1.946(e) (2) “...If the licensee orders equipment within 90 days of its initial license grant, a presumption of diligence is established”) and that assignees are not substitutes (§1.946(e)(3) “Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.”

service has been permanently discontinued at the 15 sites, by any reasonable reading of *Northeast Utilities*.

As to the remaining 16th disputed site, the World Trade Center, location 33 on WRV374, Maritime had years to find a replacement venue for that station. Maritime did not do so and simply contracted to sell/lease the site to Pinnacle. Pinnacle testifies that Location 33 is one of the sites is within the service area of its PLMRS systems, the site is not being used by Pinnacle and will not be used because doing so would cause interference to Pinnacle operations. Given that Maritime has sold/leased the spectrum to Pinnacle who have no plans to resume operations of the former World Trade Center station, the opposite facts are presented here than were presented in *Northeast Utilities*, and therefore the holding in that case mandates a holding here that location 33 on WRV374 has been permanently discontinued.

**B. Fill-in Stations Cannot Preserve Discontinued Site-Based Authorizations**

Given that Maritime, PSE, Duquesne and Pinnacle are not providing service at any of the 16 authorized site-based locations, Maritime is left with the argument that the operation of fill-in stations somehow preserves site-based licenses that are otherwise discontinued. This contention is the lynchpin of Maritime's entire case under Issue (g) and it is simply wrong.

Northeast Utilities makes it crystal clear that fill-in stations do not preserve site-based authorizations that have been discontinued:

**We clarify, however, that whether a station is in operation is determined with respect to the licensed facility; operation of fill-in sites does not render operative an inactive licensed transmitter.<sup>10</sup>**

This statement from the WTB could hardly be any clearer, and it was made in 2009. Maritime has abused the Commission's processes, wasted the resources of the parties and unlawfully

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<sup>10</sup> *Northeast Utilities*, at para. 10, Note 39 (emphasis added).

warehoused spectrum, all allegedly based on a legal theory that is flatly contradicted by the 2009 ruling of the WTB, that was expressly intended and stated to clarify this very point.

Moreover, it is self-evident that it would be legally impossible for the WTB to have reached any different conclusion. Fill-in stations are only permitted to be operated with the actual service contour of an authorized site-based station.<sup>11</sup> It must follow that where the licensee is no longer providing service from the authorized site, there is no existing system and fill-in stations cannot lawfully be operated.<sup>12</sup>

Maritime purports to rely upon the *Gurss Letter Ruling* that Mobex obtained regarding interference protection for fill-in stations.<sup>13</sup> But it is painfully obvious that Maritime's purported reliance on this letter ruling is a shame that fails to provide any basis for Maritime's abusive insistence on taking the 16 abandoned stations into a hearing on Issue (g).

The *Gurss Letter Ruling* is predicated on Mobex's representation that Mobex was operating site-based stations at authorized locations and that was constructing fill-in stations within the service contours of the existing site-based stations. The WTB expressly held that fill-in stations are only entitled to protection where authorized sites are providing service:

In order to qualify as a fill-in site, the plain language of Section 80.475(b) of the Commission's Rules requires not only that the site be located within the interference contour of one or more licensed stations, but that the fill-in site's interference contour be fully encompassed by the composite interference contour of the licensee's existing system.<sup>14</sup>

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<sup>11</sup> Maritime Communications, Fourth Report and Order, 15 FCC Rcd 22585 (Nov. 16, 2000), para. 12.

<sup>12</sup> *Id.*; *Northeast Utilities*, at para. 10, Note 39.

<sup>13</sup> *E.g.*, Robert M. Gurss, *Letter Ruling*, 18 FCC Rcd 14439, DA 03-2275 (July 11, 2003) (“*Gurss Letter Ruling*”).

<sup>14</sup> *Gurss Letter Ruling* (emphasis added).

It is simply impossible to read the *Gurss Letter Ruling* to mean that fill-in stations can be operated where the main station no longer provides service.

Moreover, the FCC directly instructed Mobex, the predecessor of Maritime, on fill-in stations, including that they can only be operated within the service contour of an existing station and only after making the proper filings with the Commission and notifications to affected parties:

3. In the *Fourth Report and Order and Third Further Notice of Proposed Rule Making* in PR Docket No. 92-257, the Commission concluded that an AMTS licensee did not have to file an application or engineering study if the proposed station was a fill-in station (i.e., its predicted interference contour did not encompass any land area beyond the composite interference contour of its **existing** system), n7 but that AMTS licensees **must** give written notice to television stations which may be affected at least fifteen days before the fill-in station is put into operation. n8....

n7 *Amendment of the Commission's Rules Concerning Maritime Communications, Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22593 P12 (2000).

n8 Id. at 22593 P12; 47 C.F.R. § 80.475(b).

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6. As indicated, Havens argues that Mobex's modification application is defective.... We agree.... Mobex contends that its proposed Hillsborough and Rockfish AMTS stations are fill-in stations and therefore, it is not required to submit an engineering study or provide notification to affected television stations. n22 Contrary to what Mobex contends, its proposed stations are not **fill-in stations** (i.e., new stations **that fill-in existing systems**)....<sup>15</sup>

An “existing system” in plain English means one that is providing service, not one that is no longer providing service. Indeed, the entire rationale for fill-in stations is to provide coverage to areas within the service area of an existing station that do not receive good coverage for some reason.<sup>16</sup> A “fill-in” station in plain English is a station that fills in the coverage area of a main

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<sup>15</sup> In the Matter of Application of MOBEX, DA 03-2064, 18 FCC Rcd 12305; 2003 FCC LEXIS 3503 (June 25, 2003) (emphasis added, some footnotes deleted).

<sup>16</sup> Maritime Communications, Fourth Report and Order, 15 FCC Rcd 22585 (Nov. 16, 2000), para. 12.

station. If there is no main station, there is no coverage to fill-in. Nor did Mobex/Maritime make the required filings and notifications.<sup>17</sup>

Maritime's purported legal theory appears to be that Maritime can sell/lease spectrum to third parties who can operate what are erroneously and unjustifiably referred to as "fill-in stations", without ever constructing or operating any of the authorized site-based stations. PSE, Duquesne and Pinnacle all admit they are not providing service from the authorized, site-based locations and have no cognizable plans to do so. Therefore, Maritime's purported legal theory is exposed to be a shame claim that Maritime's counter-parties can continue to operate fill-in stations indefinitely, despite the discontinuance of the authorized facilities.

Maritime's shame claim is completely at odds with Northeast Utilities, which holds squarely that fill-in operations cannot preserve an otherwise discontinued authorization, and with the *Gurss Letter Ruling*, which holds that fill-in stations are only entitled to protection from a geographic licensee where the contours of the fill-in stations are within the contours of an existing site-based system. Maritime's legal theory is inconsistent with the plain meaning of Section 80.475(b) of the Rules, as cited in the *Gurss Letter Ruling*, the very ruling upon which Maritime purports to rely.

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<sup>17</sup> In that regard: (1) The locations and service contours of fill-in station can even be determined without evidence of lawfully constructed and operated stations which Maritime admits it does not have and did not even want. (2) None of the alleged solely PMRS uses by PSE, Duquesne or Pinnacle-NJ are authorized by grant of the required §20.9(b) application (to seek to change from CMRS to PMRS) that, if filed, the FCC would place on Public Notice (as the rule requires) for ENL-VSL and other interested parties to challenge if they found good cause. It can only be concluded that Maritime and its assignees and lessees did not have a sound basis to even present this threshold request to the FCC for scrutiny. And (3) the fill-in stations are unauthorized since Maritime did not "give written notice to television stations which may be affected at least fifteen days before the fill-in station is put into operation." §80.475(b). *See also*, Amendment of the Commission's Rules Concerning Maritime Communications, Fourth Report and Order and Third Further Notice of Proposed Rule Making, PR Docket No. 92-257, 15 FCC Rcd 22585, 22593 (2000) and DA 03-2064, 18 FCC Rcd 12305 (June 25, 2003).

Section 80.475(b) allows site-based licensees to construct fill-in stations without specific authorization. The rule allows:

Coast stations for which the above specified need not be submitted because the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system....

The “above specified” is an application for a site-based authorization. The rule authorizes stations without specific authorization, i.e., fill-in stations, only where, “the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system.” Since Maritime has no existing system, it is not authorized to operate or allow others to operate alleged “fill-in” stations.

Moreover, Maritime has failed to establish the factual predicate for its novel legal theory. The Presiding Judge need not determine whether fill-in operations could ever excuse discontinuance of operation of the main station, notwithstanding WTB’s plain ruling that they cannot. The facts here simply do not support any such legal theory, even if the legal theory were somehow viable, which it is not.

With regard to KAE889 and the Pacific Northwest, the facilities being operated by PSE simply are not fill-in stations. PSE is operating stations pursuant to geographic area licenses. PSE’s operations have no bearing whatsoever on Maritime’s legal theory that fill-in stations can somehow preserve a discontinued site-based authorization. PSE admits there are no operations at the authorized site-based locations, and there are no fill-in operations either, only geographic area license operations.<sup>18</sup> KAE889 is discontinued and cancelled under any reasonable reading of Northeast Utilities.

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<sup>18</sup> ESD, the school district, no longer uses any Maritime spectrum as of Sept. 7, 2014.

Duquesne abandoned any use of the Maritime frequencies so Duquesne is not operating any fill-in stations. Under any rational approach, the WHG750 authorization is permanently discontinued, terminated and cancelled. The authorization cannot be preserved by the Presiding Judge based upon Duquesne's mere "hope" that one day it might use 220 MHz spectrum for meter reading in the Mt. Washington area of Pittsburg. Even under case-by-case determination of permanent discontinuance, rational limits must be applied. It would be arbitrary and capricious decision to protect an abandoned site-based authorization from automatic cancellation and reversion of spectrum rights to the geographic licensee, as required under geographic licensing, based upon a vague expression of "hope" by a third party who is not even the site-based licensee.

Pinnacle is the only party that claims to be operating so-called "fill-in" stations. Thus, WRV374 presents that only fact pattern that purports to be relevant to Maritime's apparent legal theory that fill-in operations somehow justify preservation of discontinued site-based authorizations. Analysis of the Pinnacle fact pattern only serves to expose the futility of Maritime's bizarre legal theory.

Pinnacle testifies that it does not use and has no plans to use the authorized, site-based locations. In fact, Pinnacle testifies that any resumption of operations at the authorized site-based locations would interfere with Pinnacle's alleged PLMRS operations.

So what Maritime needs to argue based on this fact pattern is that so-called "fill-in" stations that are not in fact filling in the actual contours of any existing site-based station, somehow provide a basis to preserve the site-based authorization. And this claim is made even though there are no plans to resume operations at the authorized site-based locations and the site-based operations cannot be resumed because operations at the authorized sites would interfere

with the alleged fill-in operations. This argument cannot stand. It is directly contrary to the ruling in Northeast Utilities that fill-in operations do not preserve otherwise discontinued site-based authorizations.

The Presiding Judge must conclude that summary decision is appropriate that the 16 authorizations terminated based on application of the law to the undisputed facts that no service is being rendered from the 16 sites, PSE and Duquesne are not operating fill-in sites, and the alleged fill-in sites operated by Pinnacle do not preserve the former site-based authorizations according to the WTB's plain holding in Northeast Utilities.

**III. THE ASSUMED UNDISPUTED FACTS WARRANT SUMMARY DECISION THAT ALL 16 AUTHORIZATIONS ARE PERMANENTLY DISCONTINUED AND AUTOMATICALLY CANCELLED**

Summary judgment will not harm PSE, ESD, Duquesne, NJTA and NJSEA. All of their needs for spectrum have been met by other means. Maritime's claims that cancellation and termination of its discontinued and abandoned site-based stations will somehow cause harm to utilities or public safety entities is flatly contradicted by the admitted facts. The facts show no operations at any of the 16 sites and no fill-in stations operated by PSE, ESD or Duquesne. Only Pinnacle purports to claim fill-in stations and those are not needed by NJTA or NJSEA.

**A. PSE Is Not Operating The Authorized Stations Or Any Fill-in Stations**

PSE's need for spectrum has already been amicably resolved and there is no need for an Issue (g) hearing with regard to the seven locations on KAE889. PSE admits that its private land mobile radio system ("PLMRS") was constructed using geographic service area licenses that ENL and Skybridge Spectrum Foundation ("Skybridge") sold to PSE in 2010.<sup>19</sup>

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<sup>19</sup> Skybridge is a non-profit entity created by Mr. Havens that holds certain geographic area license spectrum.

PSE has already constructed and is operating the radio network that PSE needs using its geographic service area licenses that it obtained from ENL and Skybridge. PSE states, “PSE has constructed a wide-area private land mobile communications network that PSE uses for internal communications among its employees and contractors....”<sup>20</sup> PSE states, “All of the base station transmitter sites used in PSE’s land mobile network are within the license area boundaries of the geographic AMTS licenses (Call signs WQMZ553 and WQMZ554) that PSE acquired in 2010 from [ENL and Skybridge] through license partitioning and disaggregation in FCC File Nos. 0004258631 and 0004258642, respectively.”<sup>21</sup>

The PSE PLMRS system uses modern technology that is based on low power, low site transceivers. EVH previously has explained that the Commission transitioned AMTS to geographic area licensing that allows the licensee to place radio cell sites anywhere within its geographic license with obtaining site-by-site authority. The geographic area license regime replaced the obsolete site-based license regime that was based on obsolete technology that used high-power, high site transceivers. PSE states, “PSE’s current network design is based on use of transmitter sites operating at relatively low power (generally less than 20 watts ERP) and low antenna sites, both to improve frequency reuse and to minimize the potential for interference to reception of broadcast signals on television channels 10 and 13....”<sup>22</sup>

Geographic area licensees such as PSE, that use modern technology, nevertheless may be required to protect the operations of legacy, site-based licensees within their geographic service territory. PSE identifies five of the locations on KAE889 as being a “Licensed Facility” that

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<sup>20</sup> PSE Answers to Bureau’s First Set of Interrogatories, Aug. 4, 2014 (“PSE First Answers”) at 5.

<sup>21</sup> PSE First Answers at 6.

<sup>22</sup> PSE First Answers at 6.

PSE was concerned it would have to protect. PSE states, “A number of PSE’s transmitter sites operating under its geographic licenses also fall within, or have signal contours that overlap, the signal contour of the Licensed Facility.”<sup>23</sup> In PSE’s answers to interrogatories, the term Licensed Facility is defined to as locations 4, 20, 30, 34 and 48 on KAE889.<sup>24</sup>

PSE dealt with Maritime’s site-based authorizations by entering into an agreement with Maritime. PSE states, “Because of PSE’s need to build and operate stations in the vicinity of the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], PSE entered into an Asset Purchase Agreement and a related Spectrum Manager Lease Agreement with Maritime in May 2010.”<sup>25</sup> Because PSE is the geographic licensee, PSE will have no need for the site-based authorizations and will simply cancel them. Thus, Issue (g) with regard to KAE889 has no purpose.

PSE purports to insert two caveats in respect of this conclusion, but upon examination neither of these caveats makes any sense or warrants a hearing. First, PSE states that although PSE operates a low power, low site system that does not use any of the site-based transmitter sites, one day PSE may want to use one of the sites. PSE alleges, “PSE’s current network design does not require operation of base station facilities at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], but PSE has not ruled out the possibility of installing transmitting equipment at the Licensed Facility if necessary to improve coverage to certain areas, as a back-

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<sup>23</sup> PSE First Answers at 6.

<sup>24</sup> PSE First Answers at 5. It should be noted that PSE omits two of the seven locations on KAE889, namely locations 3 and 13. This omission means that PSE does not operate facilities within any former alleged contours of locations 3 and 13 and, therefore, it is undisputed that locations 3 and 13 are permanently discontinued and automatically terminated, even if the Presiding Judge accepts Maritime’s legal theory that an abandoned Maritime site-based station is somehow preserved based on someone else’s operation of what Maritime erroneously characterizes as fill-in stations.

<sup>25</sup> PSE First Answers at 6.

up transmitter site for disaster recovery or emergency coverage...or for some other purpose.”<sup>26</sup>

This baseless claim appears to have been interposed solely to attempt to assist Maritime in its claim that the site-based authorizations have not been permanently abandoned. PSE, as the geographic area licensee, can place transmitters anywhere within its service territory, “to improve coverage...as a back-up...or for some other purpose”. PSE doesn’t need Maritime site-based authorizations to do so.

Furthermore, the allegation is non-cognizable and cannot be relied upon by the Presiding Judge to find that the KAE889 authorizations have not been permanently abandoned. A statement that “PSE has not ruled out the possibility” does not amount to a cognizable statement of intent to do anything. In fact, PSE admits that, “PSE has taken no steps, and has no definite plans, to operate transmitters on AMTS frequencies at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889].”<sup>27</sup> This candid admission shows that PSE’s attempted claim that it has not ruled out the possibility of using a site-based location, is mere puffery.

The second caveat that PSE attempts to introduce with regard to the logical conclusion that PSE will simply cancel the Maritime site-based authorizations if PSE ever gets them, is the notion that PSE somehow could use two of the locations to extend its coverage area beyond its geographic license territory. PSE attaches this caveat, which it labels “Note 2”, to two of the five locations on KAE889 that are within PSE’s geographic service area, namely locations 4 and 20.<sup>28</sup> Thus, PSE admits that it has no conceivable use for three of the five Maritime locations within the PSE geographic service area namely locations 30, 34 and 48.

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<sup>26</sup> PSE First Answers at 6.

<sup>27</sup> PSE First Answers at 7.

<sup>28</sup> PSE First Answers at 5 and 7

Upon examination, the caveat with respect to these two location rings hollow. PSE admits that PSE as the geographic license holder could continue to operate its PLMRS system without any of the Maritime site-based authorizations:

All of PSE's so-called Fill-in Sites operate within the geographic area of PSE's geographic AMTS licenses (Call Signs WQMZ553 and WQMZ554). As the holder of the geographic licenses PSE would continue to have authority, by virtue of its geographic AMTS licenses, to operate at the so-called Fill-in sites even if the Site-based authorizations were terminated.<sup>29</sup>

PSE nevertheless alleges that cancellation of the Maritime site-based authorizations could impact PSE's operations at "the northernmost and southernmost portions of PSE's service area" because, "PSE's signal contours extend across the boundaries of its geographic license areas but within the authorized contours of the Licensed Facilities [*i.e.*, locations 4 and 20]."<sup>30</sup>

The "northernmost portion of PSE's service area" is the Canadian border. The claim that Maritime's site based authorization somehow gives PSE rights in Canada is fanciful. However, the Presiding Judge need not delve into US/Canada radio treaties. The claim that PSE needs service contours in Canada is irrelevant because PSE is a US utility that serves customers in a "service territory in the Puget Sound area of western Washington", *i.e.*, the US, and not Canada.<sup>31</sup>

PSE admits that it could adjust its operations to confine them to its geographic service area.<sup>32</sup> But PSE claims that adjusting its signal contour at the Canadian border "would not be

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<sup>29</sup> PSE Answers to Enforcement Bureau Second Set of Interrogatories filed Aug. 6, 2014 ("PSE Second Answers") at 7.

<sup>30</sup> PSE Second Answers at 7. See also PSE First Answers at 5 for identification of the two sites to which Note 2 refers and at 7 for the Note 2 that claims those two sites give PSE site-based service contours beyond its geographic area licenses.

<sup>31</sup> PSE Second Answers at 3.

<sup>32</sup> PSE Second Answers at 8.

trivial exercise.”<sup>33</sup> In fact, it would be a trivial exercise because all geographic area licensees have to protect the border of their geographic licenses. It is not sound practice for a geographic licensee to attempt to use a legacy site-based authorization to extend the boundary of its geographic license. A decision endorsing such a practice would be contrary to the policies underlying the conversion of AMTS to geographic licensing.

While PSE refers to an alleged need for Maritime site-based authorizations at the northernmost and southernmost borders of its geographic license area, PSE provides no information with regard to the alleged need at the southernmost border and does not claim any hardship to adjust its operations at the southernmost border. Therefore, the claim as to the southernmost border is not cognizable.

In sum, PSE’s need for spectrum already has been amicably resolved by EVH through the sale of geographic license area spectrum to PSE. Two of the locations on KAE889, 3 and 13, are outside the PSE territory and irrelevant to PSE. Of the five locations within the PSE territory, PSE readily admits it has no need for three of them, locations 30, 34 and 48. Although PSE claims that it could use two locations, 4 and 20, to extend its service contour beyond its geographic license area at the northernmost and southernmost borders, nothing is offered to substantiate any a need at the southern border.

PSE fails to show any valid need at the northern border because PSE admits it can comply with its geographic license, as other geographic licensees routinely must do. The fact that such compliance allegedly “would not be a trivial exercise” is no basis to subject the parties and the Presiding Judge to a hearing on KAE889 that also “would not be a trivial exercise” in

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<sup>33</sup> PSE Second Answers at 8.

terms of time and expense. No hearing is warranted given that PSE already has the geographic area spectrum it needs for its PLMRS system.

The discussion herein of the PSE AMTS spectrum acquired from ENL/Skybridge should not be taken as an indication that PSE is reliant upon this spectrum. On the contrary, the Commission's files show that PSE has other licensed spectrum in other frequency ranges. Moreover, PSE's filings with regard to its other spectrum confirm that PSE's AMTS stations are being operated under its geographic AMTS licenses and therefore not as AMTS fill-in stations, according to PSE's letter to the WTB to obtain a waiver of the narrowbanding deadline and as was noted in the Order granting the waiver.<sup>34</sup>

**B. ESD Is Not Operating Any Maritime Or Other 220 MHz Spectrum**

The Bureau submitted written direct testimony from the Evergreen School District ("ESD"), which like PSE is located in the Pacific Northwest and therefore potentially would have pertained to KAE889. ESD candidly admits that ESD ceased using any Maritime spectrum, and indeed any 220 MHz spectrum, as of September 7, 2014.<sup>35</sup> Therefore, it is clear that ESD's need for spectrum already has been resolved by the use of other spectrum, that ESD will not be harmed by cancellation of the seven Maritime authorizations on KAE889, and that there is no point to an Issue (g) hearing as far as ESD is concerned.

For the record, it must be noted that it is unclear whether ESD's testimony would have any relevance to Issue (g) if a hearing were to be held. ESD asserts that it leased spectrum from

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<sup>34</sup> *E.g., Puget Sound Energy, Inc.*, 27 FCC Rcd 7010, DA 12-958 (June 19, 2012)(referencing thirty-two PLMR stations, and ...twelve narrowband PLMR stations for which it is licensed).

<sup>35</sup> Direct Testimony of William Thackeray, Manager, Accounting and Purchasing at Evergreen School District 114, EB Exhibit 1F ("ESD Test.") at para. 7.

Maritime and that, “The call sign for this spectrum is KAE889.”<sup>36</sup> However, ESD only refers to “site 1” and “site 2”. Presumably these are references to ESD’s internal designation of its facilities. KAE889 does not have a location 1 or 2, the first location listed on KAE889 is location 3. Thus, ESD’s testimony fails to establish a link between ESD and any of the seven disputed locations on KAE889.<sup>37</sup>

Fortunately, the Presiding Judge need not parse the vagaries of the ESD testimony. In the final paragraph of the ESD testimony, ESD admits that ESD ceased using any 220 MHz spectrum on September 7, 2014, and therefore its needs have been satisfied by other means and there is no need for an Issue (g) hearing to address ESD.

**C. Duquesne Is Not Operating Any Maritime Spectrum**

One of the sixteen stations in Issue (g) involves the single site license WHG750 which specifies a station location near Pittsburg, Pennsylvania. Duquesne is an electric utility that serves Pittsburg and surrounding areas. The Bureau filed direct case testimony from Duquesne.<sup>38</sup> EB Exhibit 1E. Duquesne states that it replaced the use of Maritime WHG750 spectrum with 900 MHz facilities that Duquesne operates pursuant to other operating authorities. Therefore, it is clear that cancellation of WHG750 will have no impact on Duquesne.

According to the Duquesne testimony, on February 18, 2010, Duquesne entered into an agreement to purchase from Maritime spectrum on WHG750 and to lease the spectrum pending

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<sup>36</sup> ESD Test. at para. 3.

<sup>37</sup> ESD Test. at para. 3.

<sup>38</sup> Testimony of Lee Pilar, Senior Communications Engineer at Duquesne, EB Exhibit 1E (“Duquesne Test.”).

consummation of the purchase.<sup>39</sup> Duquesne says that it constructed and operated “towers” using the WHG750 spectrum beginning in May, 2010. Ten towers are listed.<sup>40</sup>

However, Duquesne admits that it ceased using WHG750 spectrum at three of the towers in February, 2012.<sup>41</sup> Duquesne further states that it ceased using the WHG750 spectrum at the rest of the towers “later”, without specifying the exact date.<sup>42</sup> Thus, Duquesne ceased using any of the Maritime spectrum, as long ago as February, 2012, in some areas, and in the rest of the Duquesne service territory at some unspecified later date.

Duquesne offers one caveat. Duquesne indicates that it hopes to resume the use of 220 MHz spectrum at some point in the future for smart metering in the Mt Washington area of Pittsburg.<sup>43</sup> This caveat hardly justifies a hearing. The testimony refers vaguely to a hope without providing specific plans or alternatives, or the costs thereof. Also, the Mt Washington area of Pittsburg is not defined and there is no assertion that Duquesne would use Maritime spectrum elsewhere in its service territory. Thus, cancellation of the WHG750 license would not have any cognizable impact on the current or future operations of Duquesne.

Nevertheless, EVH have reached out to Duquesne and offered to provide replacement spectrum, if needed. The Duquesne testimony states that Duquesne already has and is using other spectrum and, perhaps as a result, Duquesne declined to enter into discussions with EVH. Thus, the EVH outreach did not progress to terms. However, EVH can state that EVH generally

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<sup>39</sup> Duquesne Test. para. 4.

<sup>40</sup> Duquesne Test. para. 5.

<sup>41</sup> Duquesne Test. para. 6.

<sup>42</sup> Duquesne Test. para. 7.

<sup>43</sup> Duquesne Test. para. 7.

has expressed willingness to provide spectrum to utilities at below market rates. Furthermore, in order to resolve Issue (g), EVH is willing to consider other reasonable proposals.

**D. The New Jersey Entities Do Not Need Maritime Spectrum**

So far we have discussed seven locations in the Pacific Northwest on KAE889 and one location near Pittsburg on WHG750. The remaining eight stations in the Issue (g) hearing are on WRV374 in the Mid-Atlantic area. The Bureau submitted direct case testimony from Pinnacle but not its alleged customers, NJTA and NJSEA.

Pinnacle testifies that Pinnacle leased spectrum from Maritime and constructed an 18 site PLMRS system for NJTA and a single site PLMRS system for NJSEA.<sup>44</sup> Pinnacle testifies that the PLMRS systems operate within the combined contours of five of the authorized locations on WRV374, namely locations 14, 15, 18, 25 and 33.<sup>45</sup>

Note that there are eight locations on WRV374, but Pinnacle only claims use of five of them. The unused locations are 16, 35 and 40. Given that locations 16, 35 and 40 admittedly are not being used by Pinnacle, it cannot reasonably be disputed that those three locations are abandoned and discontinued and that the cancellation and termination of those authorizations has no impact on NJTA and NJSEA.

With regard to the five locations that Pinnacle claims are relevant to its operations, it should be noted that Pinnacle admits that its radio facilities for NJTA and NJSEA, “do not operate and have never operated from the locations listed on the WRV374 license.”<sup>46</sup> Moreover, Pinnacle asserts that if operations were resumed at the authorized locations on WRV374, such operations would interfere with the NJTA and NJSEA PLMRS systems.

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<sup>44</sup> Testimony of Larry Allen, Director at Pinnacle, EB Exhibit 1G (“Pinnacle Test.”), para. 2.

<sup>45</sup> Pinnacle Test., para. 2.

<sup>46</sup> Pinnacle Test., para. 2.

Pinnacle states, "...Pinnacle believes that operations at the licensed locations would interfere with the efficient operation of the fill-in sites constructed by Pinnacle."<sup>47</sup> Pinnacle further states that, "Pinnacle has not taken any steps to resume operations at any of the locations listed on the WRV374 license and has no affirmative plans for doing so."<sup>48</sup>

As was the case with PSE described above, Pinnacle intentionally chose not to use the authorized locations because WRV374 site-based authorizations were intended for obsolete, high power/high site technology. Pinnacle uses modern technology that is designed for low power/low site facilities. As Pinnacle explains, the use of modern, low power/low site technology will, "allow for better coverage, more efficient spectrum utilization and reuse, and the provision of a more robust service to users than would be afforded by operating from the locations listed on the WRV374 license."<sup>49</sup>

It is readily apparent that the authorized locations on WRV374 have been permanently abandoned because those authorizations do not comport with modern technology. Modern technology that uses low power/low site facilities comports with the new geographic area licensing regime that allows facilities to be placed anywhere within the authorized geographic service area. Thus, it can only be concluded that cancellation of the WRV374 site based authorizations will not harm NJTA and NJSEA so long as they can obtain geographic license spectrum.

Moreover, the Presiding Judge can see in the Commission's own files that NJTA and NJSEA are not reliant upon the Maritime spectrum and have numerous other licenses. NJTA is building its own statewide trunked radio system using 800 MHz licenses that NJTA holds. This

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<sup>47</sup> Pinnacle, Test., para. 3.

<sup>48</sup> Pinnacle, Test., para. 3.

<sup>49</sup> Pinnacle, Test., para. 3.

is a matter of record at the Commission. For example, on August 14, 2014, NJTA wrote a letter to the Commission explaining that NJTA is constructing a “Statewide 800 MHz Trunked Radio System” and noting that NJTA holds “the following FCC authorized radio service call signs assigned to the NJTA: 1. WSB622 2. WSB623 3. WSB624 4. WSB625 5. WSB626.”

Likewise, the ULS system shows that NJSEA already holds numerous FCC licenses that NJSEA can and does use for radio communications, including the following call signs: WQDS589, WQET700, KDX707, KZA706, WNWF722, WPBS238, WPCE403, WPFQ273, WPLX616, WPSP220, WQDS589, and WQET700.

These are public safety entities. As such, they are entitled to spectrum for their operations. In fact, the FCC ULS database shows that NJTA and NJSEA already hold numerous authorizations. Accordingly, the New Jersey authorities will not be harmed by termination and cancellation of the WRV374 authorizations and there is no need for a hearing on Issue (g) as to those authorizations.

#### **E. The Assumed Undisputed Facts Warrant Summary Decision**

To summarize, the assumed undisputed facts show that none of the 16 authorized site-based locations are being used by Maritime to provide service, and PSE, Duquesne and Pinnacle are not using them and have no plans to use them. There are no operations and no plans by Maritime or third parties to resume operations. Maritime’s case depends entirely upon its novel theory based on fill-in operations.

However, in the Pacific Northwest, PSE is not operating fill-in stations, it is operating stations as the holder of two geographic license area authorizations. So there is no possible fill-in station theory with regard to PSE and KAE889. Moreover, of the seven disputed locations on KAE889, only five of the locations (4, 20, 30, 34 and 48) are within the PSE service territory, and two of the locations (3 and 13) are outside the PSE service area and clearly not subject to

any fill-in theory. PSE admits that PSE, as the geographic area licensee, has no need for three of the KAE889 authorizations (locations 30, 34 and 48). PSE claims that two authorizations (locations 4 and 20) would give PSE service contours beyond its geographic service area, but these claims are unsubstantiated. Likewise, the testimony that PSE might use an authorized location for some future purpose is mere speculation and, as geographic licensee, PSE can use any location within its geographic service area without any need for a site-based authorization.

In the Mid-Atlantic area, Duquesne admits that it has no operations at the WHG750 site, and no fill-in operations on any Maritime spectrum at this time. So there are no facts to support any fill-in legal theory as to WHG750, it is discontinued and cancelled. Duquesne's "hope" to use 220 MHz for meter reading some day is non-cognizable.

Pinnacle admits there are no operations at the five WRV374 locations (14, 15, 18, 25 and 33) that are within the area in which Pinnacle testifies that it constructed PLMRS systems for NJTA and NJSEA. Yet Pinnacle still claims that it is operating "fill-in" stations. The Presiding Judge simply must conclude that these are not fill-in stations. Pinnacle admits it has no plans to operate at any of the site-based authorization locations and, moreover, testifies that any operations at any of those locations would interfere with its PLMRS systems. The notion that the main station would interfere with the fill-in station shows that these are not fill-in stations since fill-in stations fill-in coverage areas of a main station. The remaining eight locations (16, 35 and 40) on WRV374 are outside the Pinnacle area and so not even fill-in operations can be claimed by Maritime.

**F. The Self-Serving Testimony of Maritime and Choctaw Is No Bar To Summary Decision**

Although the Bureau saw fit to introduce direct testimony from Maritime and Choctaw, their testimony simply confirms that Maritime abandoned efforts to operate the businesses that

Maritime acquired from Mobex and others. For example, Mr. Reardon testifies that Maritime gave up on trying to operate the former Mobex stations that Reardon sold to Maritime when he headed Mobex, and then came over to Maritime to attempt to operate. Mr. Reardon worked with various brokers to attempt to find a buyer for the entire collection of Maritime spectrum but could not and ended up making some piecemeal sales to PSE, ESD, Duquesne and Pinnacle. Although Maritime attempts to characterize itself as making efforts to put the 16 stations back into operation, the efforts basically boil down to selling the authorizations to these entities with interim leases.

Therefore, the Reardon and other Maritime/Choctaw testimony adds nothing to the testimony of the buyers/lessors of the spectrum, PSE, ESD, Duquesne and Pinnacle, that has been thoroughly analyzed above. Application of the law to the facts set forth by PSE, ESD, Duquesne and Pinnacle can only result in a conclusion that operations at the 16 disputed stations are permanently discontinued and the authorizations cancelled for the reasons set forth above. The Maritime testimony to the effect that Maritime entered into sales contracts/interim leases with PSE, ESD, Duquesne and Pinnacle adds nothing to the Maritime case and does not raise any bar to summary decision that the 16 authorizations are terminated and cancelled.

#### **IV. CONCLUSION**

There is no reasonable basis to impose the cost and delay of an Issue (g) hearing on the parties to this or the Commission. Cancellation of the remaining 16 site-based licenses will not harm PSE, ESD, Duquesne, NJTA or NJSEA. PSE already has geographic area license AMTS spectrum. ESD and Duquesne have switched their operations to 900 MHz spectrum and have no further need for Maritime AMTS spectrum. NJTA and NJSEA also have other spectrum.

Maritime's novel legal theory based on fill-in stations is contrary to *Northeast Utilities* and *Mobex*. Even under the alleged legal theory, the PSE operations cannot save the 7 KAE889 authorizations because PSE is not operating fill-in stations but rather geographic area license stations. ESD has no operations on AMTS spectrum as of September 7, 2014. WHG750 also cannot be preserved on a fill-in theory because Duquesne ceased any such operations, at some sites as long ago as 2012. While Pinnacle claims to operate fill-in stations for 5 of the 8 sites on WRV374, even those 5 sites cannot be preserved based on Maritime's novel fill-in theory because Pinnacle admits the main sites aren't operating, there are no plans to resume their operations and they are mutually exclusive with the so-called fill-in stations.

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

The undersigned, a secretary at Chadbourne & Parke, LLP, hereby certifies that she has on this 27<sup>th</sup> day of October, 2014, mailed by first class United States mail copies of the foregoing Motion for Summary Decision on Issue (g) to:

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