

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION)	WT Docket No. 13-85
Application to Assign Licenses to Choctaw Holdings, LLC)	FCC File No. 0005552500
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	FCC File Nos. 0004153701 and 0004144435
Applications to Modify and to Partially Assign License for Station WQGF318 to Southern California Regional Rail Authority)	
)	
Application for New Automated Maritime Telecommunications System Stations)	FCC File No. 0002303355
)	
Order to Show Cause, Hearing Designation)	EB Docket No. 11-71 File No. EB-09-IH-
)	
)	FCC File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

To: The Secretary, Attn: The Commission (docket 13-85), and ALJ Sippel (docket 11-71)

INITIAL REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION¹

The Skytel-1 entities (Warren Havens, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation)(together, “SK-1”) and Skytel-2 entities (Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC) (together, “SK-2”)(SK-1 and SK-2 together, the “Skytel Entities”) hereby jointly file this initial reply to the MCLM opposition (the “Opposition”) to their petitions for reconsideration of aspects of the *MO&O*, FCC 14-133, released on September 11, 2014 (“the Order”) (the “Skytel-1

¹ The defined terms used herein have the same meaning they had in the Skytel-1 and Skytel-2 petitions for reconsideration.

Recon”, the “Skytel-2 Recon”, and together the “Skytel Recons”).²

The Skytel Entities request that the Opposition be fully dismissed and disregarded, since it is clearly late and MCLM did not request an extension of time to file or a waiver of Section 1.106(g).^{3 4} The Opposition is clearly late for reasons shown in the two exhibits hereto, which are fully referenced and incorporated herein. The exhibits hereto contain two email strings. There are two email strings since Mr. Havens responded to Mr. Keller’s email before he saw Mr. Stone’s response, so we are including both Mr. Stone’s email (and its string) and Mr. Havens’ email to Mr. Keller (and its string). As Mr. Havens notes in his email in Exhibit 2, *inter alia*, “The public notice setting up 13-85 and parties practice thereunder is fully clear that there is no party service requirement”, and thus MCLM did not have the 3 additional days afforded under Section 1.4(h) to file its Opposition.

As for MCLM’s assertions that the Skytel Entities’ respective petitions for reconsideration are untimely, the Skytel Entities initially respond by fully referencing and incorporating herein their facts and arguments in their filing in Dockets 13-85 and 11-71, entitled “Explanation of Timely Filing, and Explanation of ECFS Problems on 10/14/14, and Conditional Request to Accept,” filed with the FCC on October 22, 2014 (the “Explanation”). It explains the reasons why the Skytel Entities were unable to file their petitions via the ECFS system, but that

² As shown by Exhibit 1, Skytel Entities have until November 5, 2014 to file their reply, however, out of an abundance of caution they are filing this initial reply in case for any reason the FCC later finds that any reply filed on November 5, 2014 is late because the deadline for filing replies to timely oppositions was October 31, 2014.

³ Although it was not required, Skytel Entities did serve paper copies of the Skytel Recons on MCLM’s counsel, and the Skytel Recons were filed in docket 13-85 on 10/15/14 and posted on 10/17/14 (if a paper copy of the petitions were filed with the Commission, service would still not have been required upon MCLM). Skytel Entities note these facts here only in case MCLM tries to argue to the FCC that its Opposition should not be deemed late because it did not timely get a copy of the Skytel Recons that it believes had to be served, unlike its own Opposition.

⁴ We do not believe that under Commission practice, a “motion to strike” of a procedurally defective filing is appropriate, especially if it were to be filed later than the time provided for an opposition or reply. We note that since a supporter of MCLM, SCRRA, recently filed such an motion against the SkyTel Entities petitions for reconsideration of the FCC 14-133.

they filed them via other electronic means, including that the Skytel-2 group filed its petition timely via the FCC's ULS pleading system under the SCRRA file numbers that are listed in the Order's caption and that were subject of the Order's findings regarding Footnote 7 relief.⁵ The Skytel Entities did submit the filing timely several times, and got the pages attached to the Explanation showing that the system was not responding. Thus, the Skytel Entities did file it timely, over and over, but the system would not accept it because the system was jammed.⁶

The Skytel Entities also initially respond to the Opposition's arguments that misconstrue that the Skytel Entities are challenging the Jefferson Radio policy. That is incorrect. Skytel was challenging the Commission's *Second Thursday* policy, sometimes called a "doctrine."

Respectfully submitted, October 31, 2014

⁵ Submitting a pleading via the FCC's ULS pleading system is one of the official, direct methods for filing pleadings with the FCC. It is no different than filing a document in paper with the Secretary and then the Secretary's office having to give it to the FCC's ULS or ECFS staff so that they may post it in the relevant dockets and/or under the relevant file numbers listed in a pleading's caption. The Skytel-2 petition was timely filed via ULS and received by the FCC, it was addressed to the Secretary, and it clearly denoted in its header the matters to which it applied, including docket numbers and file numbers. Also, both the Skytel-1 and Skytel-2 petitions would have been filed timely via ECFS if ECFS was not experiencing problems that did not permit submission (see their "Explanation" filing), as evidenced by the fact that Skytel-1 and Skytel-2 did not wait until the "last minute", but instead attempted to file well before the midnight deadline, and that they did submit their filings via other electronic means to the FCC prior to midnight. Even if they had waited to the last minute, the FCC's official ECFS system is setup for the purpose of allowing parties to electronically file pleadings right up to and before any midnight filing deadline, however, when that system is not working, then there is good cause to accept pleadings that would have been filed timely if not for such problems (and where the efforts to electronically file timely are demonstrable and supported, as in this case).

⁶ Others have experienced problems trying to submit filings via the ECFS system, see e.g. Exhibit 3 hereto that contains recent emails from Pamela Kane of the FCC's Enforcement Bureau and Jeffrey Sheldon, counsel for Puget Sound Energy, noting issues with being able to submit filings via ECFS. This further demonstrates the assertions of the Skytel Entities that it was solely due to a major ongoing problem with the ECFS system at the relevant time period, that caused the actual submissions these entities did timely make on ECFS, to not be accepted by the ECFS system. However, again, as the Explanation shows, those entities' filings were also timely submitted by ULS filing and/or email.

/s/

Warren Havens

For defined Skytel Entities named above

2509 Stuart Street, Berkeley CA 94705

Phone (510) 841 2220

Declaration

I declare under penalty of perjury that the facts in the foregoing filing are true and correct to the best of my knowledge.

/s/ Electronically submitted. Signature on file.

Warren Havens
President of the Skytel Entities named above

October 31, 2014

EXHIBIT 1

Subject: RE: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85

Date: Thursday, October 30, 2014 1:57:32 PM PT

From: Scot Stone <Scot.Stone@fcc.gov>

To: Robert Keller <rjk@telcomlaw.com>, 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>, Warren Havens (warren.havens@sbcglobal.net) <warren.havens@sbcglobal.net>

CC: Jeff Tobias <Jeff.Tobias@fcc.gov>

If the SkyTel parties file a reply on or before Wednesday, November 5, it will be accepted and considered. Whether it is being accepted and considered as timely or pursuant to an extension is not something we need to decide today.

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

From: Bob Keller [<mailto:rjk@telcomlaw.com>]

Sent: Thursday, October 30, 2014 4:29 PM

To: 'Jimmy Stobaugh'; Jeff Tobias

Cc: 'Warren Havens'

Subject: RE: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85

Mr. Tobias, et al.,

The Havens reconsideration petitions that Maritime opposed were in fact served by mail. Maritime therefore added the three days to the response time. Reasonable minds can perhaps differ, but Maritime does not interpret the public notice in WT Dkt 13-85 as meaning that service (for purposes of Rule 1.4(h)), is not required, but rather that filing a pleading via ECFS satisfies any service requirement. In other words, parties are required either to actually serve one another or post via ECFS which accomplishes the same end.

Maritime's opposition was not served by mail, although a courtesy electronic copy was served by email. Maritime has no objection to a deadline for replies of Wednesday, November 5, 2014, and agrees that no request for any extension to that date is necessary. Thank you.

--

Bob Keller <rjk@telcomlaw.com>
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-0428
202.223.2100

From: Jimmy Stobaugh [<mailto:jstobaugh@telesaurus.com>]

Sent: Thursday, October 30, 2014 3:53 PM

To: Jeff Tobias

Cc: Robert J. Keller; Warren Havens

Subject: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85

Mr. Tobias, WTB, FCC:

Yesterday, in docket 13-85, MCLM filed an opposition to the Skytel-1 and Skytel-2 petitions for reconsideration previously filed in Docket 13-85 (and 11-71 and the captioned file numbers) re: FCC 14-133. The MCLM opposition noted in its Certificate at the end that it was filed in docket 13-85, in which no service to parties was required. The MCLM opposition was late because under Section 1.106(g) oppositions are to be filed within 10 days after the petition is filed, and under Section 1.4(h), if a document is required to be served on other parties, and the document is in fact served by mail, then an additional 3 days to the 10 days is allowed. However, this MCLM opposition was not required to be served on parties, nor was in fact served by mail. Thus, MCLM is not afforded an additional 3 days to the 10 days. Thus, its opposition was due last Friday, Oct. 24th, and is late because it was filed yesterday. The Skytel-1 and Skytel-2 group entities intend to submit a request to dismiss or strike the MCLM opposition for being clearly late under the applicable rules and the Public Notice setting up Docket No. 13-85, which stated that documents do not need to be served, but only filed under the docket.

However, given that the FCC may consider the substance of the MCLM opposition, even though it is late, and even if the Commission agrees with the Skytel-1 and Skytel-2 groups that it is late (e.g. The Commission in its decision on 14-133 found that the CII Companies petitions were not permitted and thus were procedurally defective; however, the Commission stated that it felt that it should respond to the substance and it did so. Therefore, the Commission may consider the MCLM opposition even though it is clearly late.)

In the circumstances, the Skytel-1 and Skytel-2 group entities request that they have the rule-based period of time to reply to the MCLM untimely filed opposition. Section 1.106 provides 7 calendar days for filing a reply. Thus, we request that the Skytel-1 and Skytel-2 group parties have until the end of next Wednesday, Nov. 5, to file their replies. This is not a request for extension of time for reasons shown above. Thus, we do not believe any phone notification is required. However, after sending this email, I will call Mr. Keller to inform him of this filing (he is also copied on this email).

We would appreciate a decision on this request before the end of tomorrow.

Mr. Havens is currently on travel, so he has asked me to submit this email filing, which he has reviewed, approved and given me authority to file on his behalf.

Sincerely,

Jimmy Stobaugh
For Warren Havens, President
Of the Skytel-1 and Skytel-2 group entities
2509 Stuart Street
Berkeley, CA 94705
ph: 510-841-2220

cc: Robert Keller

EXHIBIT 2

Subject: Re: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85
Date: Thursday, October 30, 2014 2:32:07 PM PT
From: eitt líf koma nú griðastaðir <warren.havens@sbcglobal.net>
To: 'Jeff Tobias' <Jeff.Tobias@fcc.gov>
CC: Bob Keller <rjk@telcomlaw.com>, Jimmy Stobaugh <jstobaugh@telesaurus.com>

Mr. Keller,
Thank you for the timely response and no objection.

Mr. Tobias,

I note the following here in support of the basis of the request to permit SkyTel entities to file a reply or replies. Even though Mr. Keller does not oppose the request, because he does not concede the basis of the request (that his Opposition was late), and the FCC must decide this, I respond as follows:

The public notice setting up 13-85 and parties practice thereunder is fully clear that there is no party service requirement. There is no Commission service rule that says filing on ECFS is service on any party. Rather, it is a public docket where interested parties (even those with no Article III party standing) can file, and can find filings, and respond thereto, and unless the FCC says otherwise, ECFS filing do not have to be served on any other docket participate (whether they have legal standing or not).

Rule 1.4, cited below, distinguishes between a filing that must be service on parties, and is in fact served by mail, and a filing that under a Commission decision do not have to be served on parties. Thus, it cannot be argued that 13-85 filings are subject to the service rule that, in some cases, allows 3 additional days: for filings that must be served, and were in fact mailed, and when due in 10 days or less.

The fact that Skytel chose to also mail a copy does not change the above. We are not the FCC, and it is the FCC that determined that filings under 13-85 are only on ECFC and not need to be served on parties, whether they are parties with legal standing or others. In addition, since the Commission in FCC 14-133 included docket 11-71 in the caption (apparently since FCC 14-133 lifted the stay in 11-71), and included file numbers from the licensing applications that are subject of 13-85, Skytel served copies by mail, since the FCC did not determine that filings under that docket and related to those applications could be filed without service on parties.

If Mr. Keller believe that parties may differ on these matters, under FCC rules and the FCC public notice creating 13-85, then he could have asked for clarification long ago. But there is nothing unclear on these matters.

Thus, I do not believe Mr. Keller has any reasons to show, or that he did show, that the basis of this request is not accurate: that his Objection was untimely.

Respectfully,
Warren Havens

From: Bob Keller <rjk@telcomlaw.com>
To: 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>; 'Jeff Tobias' <Jeff.Tobias@fcc.gov>
Cc: 'Warren Havens' <warren.havens@sbcglobal.net>
Sent: Thursday, October 30, 2014 1:28 PM
Subject: RE: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85

Mr. Tobias, et al.,

The Havens reconsideration petitions that Maritime opposed were in fact served by mail. Maritime therefore added the three days to the response time. Reasonable minds can perhaps differ, but Maritime does not interpret the public notice in WT Dkt 13-85 as meaning that service (for purposes of Rule 1.4(h)), is not required, but rather that filing a pleading via ECFS satisfies any service requirement. In other words, parties are required either to actually serve one another or post via ECFS which accomplishes the same end.

Maritime's opposition was not served by mail, although a courtesy electronic copy was served by email. Maritime has no objection to a deadline for replies of Wednesday, November 5, 2014, and agrees that no request for any extension to that date is necessary. Thank you.

--

Bob Keller <rjk@telcomlaw.com>
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-0428
202.223.2100

From: Jimmy Stobaugh [mailto:jstobaugh@telesaurus.com]
Sent: Thursday, October 30, 2014 3:53 PM
To: Jeff Tobias
Cc: Robert J. Keller; Warren Havens
Subject: Request re: filing deadline for Replies to MCLM Opposition filed in Docket 13-85

Mr. Tobias, WTB, FCC:

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We would appreciate a decision on this request before the end of tomorrow.

Mr. Havens is currently on travel, so he has asked me to submit this email filing, which he has reviewed, approved and given me authority to file on his behalf.

Sincerely,

Jimmy Stobaugh
For Warren Havens, President
Of the Skytel-1 and Skytel-2 group entities
2509 Stuart Street
Berkeley, CA 94705
ph: 510-841-2220

Cc: Robert Keller

EXHIBIT 3, PART 1

Subject: 10 29 14 EB Docket No. 11-71 Maritime Communications/Land Mobile (1 of 2)

Date: Wednesday, October 29, 2014 8:56:08 AM PT

From: Pamela Kane <Pamela.Kane@fcc.gov>

To: 'JStenger@chadbourn.com' <JStenger@chadbourn.com>, 'Matthew.Plache@PlacheLaw.com' <Matthew.Plache@PlacheLaw.com>, 'czdebski@eckertseamans.com' <czdebski@eckertseamans.com>, 'feldman@fhhlaw.com' <feldman@fhhlaw.com>, 'richards@khlaw.com' <richards@khlaw.com>, 'Bob Keller' <rjk@telcomlaw.com>, 'Sheldon, Jeffrey' <jsheldon@lb3law.com>, 'rkirk@wbklaw.com' <rkirk@wbklaw.com>, 'wright@khlaw.com' (wright@khlaw.com)' <wright@khlaw.com>, 'Warren Havens (warren.havens@sbcglobal.net)' <warren.havens@sbcglobal.net>, 'Jimmy Stobaugh (jstobaugh@telesaurus.com)' <jstobaugh@telesaurus.com>, 'Catalano, Albert J.' <catalano@khlaw.com>

CC: Austin Randazzo <Austin.Randazzo@fcc.gov>, Richard Sippel <Richard.Sippel@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>, Michael Engel <Michael.Engel@fcc.gov>

Enclosed please find a courtesy copy of one of two items filed earlier by the Enforcement Bureau. Due to a continuing problem with the Commission's ECFS system and the size of one of the pleadings, they were not filed electronically.

Due to the size of the second item, it will be sent under separate cover.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
202-418-2393

EXHIBIT 3, PART 2

Subject: RE: 10 29 14 EB Docket No. 11-71 Maritime Communications/Land Mobile (1 of 2)
Date: Wednesday, October 29, 2014 9:01:01 AM PT
From: Sheldon, Jeffrey <jsheldon@lb3law.com>
To: Pamela Kane <Pamela.Kane@fcc.gov>, 'JStenger@chadbourn.com' <JStenger@chadbourn.com>, 'Matthew.Plache@PlacheLaw.com' <Matthew.Plache@PlacheLaw.com>, 'czdebski@eckertseamans.com' <czdebski@eckertseamans.com>, 'feldman@fhhlaw.com' <feldman@fhhlaw.com>, 'richards@khlaw.com' <richards@khlaw.com>, 'Bob Keller' <rjk@telcomlaw.com>, 'rkirk@wbklaw.com' <rkirk@wbklaw.com>, 'wright@khlaw.com' (wright@khlaw.com)' <wright@khlaw.com>, 'Warren Havens (warren.havens@sbcglobal.net)' <warren.havens@sbcglobal.net>, 'Jimmy Stobaugh (jstobaugh@telesaurus.com)' <jstobaugh@telesaurus.com>, 'Catalano, Albert J.' <catalano@khlaw.com>
CC: Austin Randazzo <Austin.Randazzo@fcc.gov>, Richard Sippel <Richard.Sippel@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>, Michael Engel <Michael.Engel@fcc.gov>

Attached is a pleading on behalf of Puget Sound Energy, Inc. Due to continuing problems with ECFS this morning I cannot confirm whether the document has been filed electronically or not. Efforts will be made to confirm electronic filing and/or to file a hard copy with the Secretary's office later this afternoon.

A hard copy will, in any event, be delivered to the Presiding Judge's office this afternoon.

Jeffrey L. Sheldon
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Certificate of Service

The undersigned certifies that he has on this 31st day of October 2014, caused to be served, by first-class United States mail, a copy of the foregoing filing to:⁷

Parties in Docket No. 11-71:

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
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Jeff Sheldon jsheldon@lb3law.com

Jack Richards
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Washington, D.C. 20001
Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative, Dixie Electric Membership Corporation, Inc.
Jack Richards Richards@khlaw.com, Wesley Wright wright@khlaw.com, Albert Catalano catalano@khlaw.com

⁷ The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

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Gerit F. Hull
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Counsel for Maritime Communications/Land Mobile LLC
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Robert G. Kirk
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James A. Stenger
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1200 New Hampshire Ave., NW
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Counsel to Environmental LLC and Verde Systems LLC
James Stenger jstenger@chadbourne.com

Jimmy Stobaugh, GM
Skytel entities
2509 Stuart Street
Berkeley, CA 94705
Jimmy Stobaugh jstobaugh@telesaurus.com

Parties re: Footnote 7 decision, not listed above:

Dennis C Brown
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
Counsel for Maritime Communications/Land Mobile LLC (MCLM Debtor-in-Possession)

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

/s/ [Filed Electronically. Signature on File]

Warren Havens