

Before the Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
MARITIME COMMUNICATIONS/LAND ) WT Dock. 13-85  
MOBILE, LLC (i) Application to Assign Licenses ) FCC FN. 0005552500  
Application to Assign Licenses to Choctaw )  
)  
(ii) Applications to Modify and to Partially Assign ) FCC FNs. 0004153701 0004144435  
License for Station WQGF318 to Southern )  
California Regional Rail Authority, and )  
)  
(iii) Application for New Automated Maritime ) FCC FN. 0002303355  
Telecommunications System Stations )  
)  
And OSC, HDO, and Notice of Opportunity ) EB Dock 11-71, FN EB-09-IH-1751  
) FCC FNs. 0004030479, etc.

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

Opposition to Consolidated Motion  
to Dismiss Petitions for Reconsideration<sup>1</sup>

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” or “Entities”) hereby jointly file this opposition (the “Opposition”) to the Southern California Regional Rail Authority (“SCRRA”) consolidated motion to dismiss (the “Motion” or “D-Motion”) the Skytel Entities’ petitions for reconsideration of aspects of the *MO&O*, FCC 14-133, released on September 11, 2014 (“the Order”) (the “Skytel-1 Recon”, the “Skytel-2 Recon”, and together the “Skytel Recons” or “Recons”).

1. Skytel Recons Were Timely. Contrary to the Motion, the Recons were timely filed as the Skytel Entities showed in the following filings already before the FCC in docket 13-85:

(i) *Further Reply to Opposition to Petitions for Reconsideration*, by the Skytel Entities, filed on November 5, 2014 in dockets 13-85, 11-71 and under relevant ULS file numbers, regarding the Maritime Communications/Land Mobile LLC opposition to the Skytel

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<sup>1</sup> The defined terms herein have meaning given in the Skytel Recons.

Recons. (the “Further Reply”, a copy is included at Exhibit 1 hereto).

In particular, see the Further Reply’s facts and arguments under its section “2. The Recons were timely.” that starts on page 2 and ends on page 4.

(ii) *Initial Reply to Opposition to Petitions for Reconsideration*, by the Skytel Entities, filed on October 31, 2014 in dockets 13-85, 11-71 and under relevant ULS file numbers, regarding the Maritime Communications/Land Mobile LLC opposition to the Skytel Recons. (the “Initial Reply”, a copy is included at Exhibit 2 hereto).

In particular, see all of the Initial Reply’s facts and arguments starting at page 2, ¶2 and going to the end of page 3, including its reference and incorporation of the Skytel Entities’ “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. (Together, the “Further Reply” and “Initial Reply” are the “Skytel Reply”).

The Skytel Entities hereby fully reference and incorporate herein all of their facts and arguments under the above identified sections of the Further Reply and Initial Reply that respond to the Motion’s arguments regarding the timeliness of the Skytel Recons. Those sections fully show that the Skytel Recons were timely filed, that the Skytel Entities did not wait until the last minute to submit their pleadings, that the Skytel Entities did not have any technical issues on their side (as evidenced by the timely submission of the Skytel Recon’s by other electronic means to the FCC, including filing of the Skytel-2 Recon via FCC ULS), and that it was solely due to ECFS being jammed that the Skytel Recons were not accepted by the ECFS system in docket 13-85 on 10/14/14. It is more efficient for all parties for the Skytel Entities to reference and incorporate the relevant sections of the Further Reply and Initial Reply that contain the facts and arguments responsive to the Motion’s arguments, rather than reiterate them here again. In addition, copies of the Further Reply and Initial Reply are being included here as exhibits. Also, the above reference and incorporation clearly identifies the relevant sections of the Further Reply

and Initial Reply and both were already filed in docket 13-85 and served on SCRRA. Thus, SCRRA is not prejudiced by said reference and incorporation.

2. The “Motion” a §1.106 Opposition, is Late, Must be Dismissed, and Violates §1.52

The SCRRA “Motion” is a ploy. First, it is really an Opposition to the Skytel Recons, and it is late (since it was filed after days after the deadline) and must be dismissed. A motion to dismiss is not used to assert a pleading is late, but a timely Opposition is used. SCRRA give no reason that they could not have timely filed an Opposition asserting what they assert in the Motion. If a "motion" could be used in lieu of a timely opposition, filed after the deadline for the opposition under rule section 1.106, then there is no meaning to that deadlines for and oppositions under that rule: Rule section 1.45, the general rule on “Pleadings; filing periods” commences, “Except as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section,” and then discusses “motions” under subpart (b). A motion cannot be used when a “Pleading” is “otherwise provided for in this chapter,” which of course includes an opposition to a petition fore reconsideration under rule section 1.106 which is “under this chapter.” In addition, and “motion” seeks discretionary decision, not a decision under a rule that requires a decision. No one would ask for discretionary decision via a motion when the party could submit a opposition under a rule that requires a decision: the reason SCRRA apparently did this is discussed below. But in any case, the motion is improper, not authorized by rules, and must be deemed a opposition under section 1.106 and is days late, and thus should be summarily dismissed. In addition, for reasons noted above, as well as those below, it is a frivolous violation of section 1.52 and should be sanctioned. Accordingly, the “Motion” should be summarily dismissed.

As discussed above in Section 1 at length, the Skytel Recons were clearly not late based on demonstrated facts, and no amount of repetitive spurious arguments to the contrary, as used in the “Motion,” changes that, and the “Motion” does not refute these facts. The “Motion” is

further a frivolous practice of law under section 1.52 to attempt to throw up smokescreen assertions and devices, for pages on end, to the contrary of these facts, and its citations to other asserted-relevant matters have no bearing on this allegation of lateness as tot the subject Skytel Recons. *However, SCRRA is doomed as to Footnote 7 relief by its own long-winded assertions in the primacy of timely filings, and unlike the Skytel Recons, SCRRA and MCLM are in fact years late, and worse.*<sup>2</sup>

3. The Assertion of a Right to File Another Challenge Pleading is Also Frivolous. The “Motion” alleges that SCRRA can file another challenge of the Recons if the Commission does not grant its so-called Motion that is really a late-filed opposition. It cites no law in support and it is clear that if this assertion were valid, there is no meaning the pleading cycle deadlines in section 1.106 or the Commission’s own 90-day deadline set by Congress if 47 USC §405 for a licensing decision such as this. *Added to the above, the SCRRA filing is clearly a frivolous filing interposed for delay under §1.52. It literally seeks a delay outside relevant rules, and with no public interest showing attempt of any sort- first, by a late filed opposition disguised as a “motion,” then asserting that if that does not work, it has a right to a further challenge.* If SCRRA had any thing to present to challenge the Recons’ substance, it has plenty of time to

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<sup>2</sup> Applying this practice to SCCRA itself, MCLM and SCRRA are late (apart from outright fraud, lack of candor, and other such more serious violations) in: (1) not, to this day, amending (i) the assignment application to SCRRA, and (i) the request for Footnote 7 relief, to reflect the facts that SCRRA by its own internal determinations, does not need AMTS spectrum at all for the Congressional PTC mandate, is not building an actual PTC system, and even for the general PMRS wide-area, high-AGL sites network it is building (a small capacity of which will be used for very simple PTC signaling) it does not need even the majority of 1 AMTS block, etc.: these misrepresentations used to dupe the Commission and obtain the Footnote 7 relief are in part discussed below, and will be subject of other pleadings by Skytel entities. The point here is that withholding information to mislead the Commission if far worse, by orders of magnitude, than being late by small amount of time—if the Skytel Recons were late, which they were not. And (2) MCLM is late on all kinds of rule compliance required to keep the license being sold to SCRRA as shown in the HDO FCC 11-64 and ULS records. The HDO did not only allow for a hearing, it also instructed MCLM that it was late in filing section 1.65 updates to its license applications to provide the required information noted in the HDO. Compliance with those instructions were not subject to a fact finding hearing at all. SCRRA should make its long-winded speed on the impermissibility of late filings to MCLM and the licenses obtained and maintained by fraud—criminal licensing-- that it is trying to launder by its own fraud, as reflected herein.

prepare and submit is in a timely opposition, or even in a late filed one with a request to accept, if it had any excuse for being later. The reason why SCRRA and its counsel would file such a sanctionable pleading, bereft of any attempt to refute the Recons' substance, is discussed below.

#### 4. The "Motion" Seeks to Bar the Recon's Substance, and Skytel's Defense Thereof.

The "Motion seeks to fully dismiss the Recons and keep the Commission from a review of the substance. When a party uses a procedural ploy such as this "Motion" that is not likely to be accepted by the Commission, and at the same time does not even, in the alternative to the ploy, attempt to refute the substance of what the "Motion" seek to dismiss, it should be take as an admission that SCRRA cannot refute the Recons, and has something it is hiding as the Recons asserted with facts. SCRRA attorneys cannot really believe, as they write in the Motion, (i) that they are confident the Recons are late and will be ignored by the Commission, and (ii) that if not, they will then be permitted to challenge the Recons' substance, since '(i)' is clearly false and '(ii)' would require a rule waiver, and there is no good cause for one. This begs the question: why is SCRRA using this dangerous ploy, and is not challenging the Recons? There is a reason:

As the Recons stated, SCRRA mislead and continues to mislead the FCC that it needs AMTS for PTC, and needs a full block, 1,000 kHz. Because SCRRA's own extensive internal records show this, as do extensive PTC-system and PTC-purpose public documents, SCRRA apparently chose to "duck and run" by the sanctionable ploy "Motion," rather file any thing in opposition, not even a statement simply denying these charges—since no one could submit that but as further misrepresentation. Thus, the better of two evils on the horn of this dilemma was to file a long-winded "Motion" outside of relevant rules and time, and to then suggest that if that does not work, it can later address the substance. The FCC should investigate SCRRA from the start (when it submitted with MCLM the assignment application) to this day, for its assertions under 18 USC §1001, and 47 CFR §§ 1.52. 1.17 and the Policy Regarding Character Qualifications... Gen. Docket No. 81-500, Docket No. 78-108, REPORT, ORDER AND

POLICY STATEMENT, Released January 14, 1986 statement and law therein (as to high duty of candor of applicants, etc.) for these misrepresentations. There is more than ample evidence of this already shown by Skytel commencing in the docket 10-83, and continuing in proceeding 11-71, then in the Recons, and further show as follows.

(1) Exhibit 3 hereto is a document from SCRRA records entitled: "Positive Train Control Implementation in the LA Basin. Darrell Maxey- SCRRA, Nick LaRocco- Parsons. January 7, 2012. National Railroad Construction and Maintenance Association."<sup>3</sup> This exhibit shows (the FCC legal staff may better grasp some of the simple technical matters that follow with advice from the FCC OET), the following relevant facts, among others, contrary to representations by SCRRA to procure Footnote 7 relief (FN7 relief).

(1) Lack of any assertion or demonstration that only AMTS is available, and in fact, cites to PTC 220 LLC spectrum in 220 MHz service. Mere choice of one band over another, since the for-profit freight railroads held 220 MHz before the Congressional Mandate, is not what SCRRA represented to get FN7.

(2) SCRRA is building the so-called PTC system or network for its partner freight railroads not only SCRRA. They are for-profit companies that do not need boons from the FCC to violate the Jefferson Radio policy.

(3) SCRRA is not building a system for PTC signaling, which is at and close to track interlocking from low-AGL-height antenna base stations and low power,<sup>4</sup> but is using high AGL

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<sup>3</sup> Several Skytel parties submitted to SCRRA several requests under the California Open Public Records Act. Some documents were released, and others were not yet released but are being pursued. In addition, we obtained some SCRRA PTC-related records from other sources. Thus far, it is clear that SCRRA withheld core evidence of decisional importance as to Footnote 7 relief from the FCC. Once we obtain more full information (but we have enough already to demonstrate this), we will supply the extensive records to the FCC with an accompanying memo, and serve a copy on SCRRA and MCLM.

<sup>4</sup> PTC signaling, as meant in the Congressional Mandate, does not apply to trains on straight tracks with no interlockings whereby unauthorized trains may get on the wrong track. PTC systems have to cover a distance from interlockings since trains take time to stop. This is far less coverage than full

sites with full coverage: that is for general land PMRS not PTC. That is why in this document SCRRRA alleges to need a multiple of 100 kHz, and not what the other passenger railroads with a real PTC system architecture assert they need. Skytel knows that from direct dealings with the largest public passenger railroads in the East Coast, most larger than SCRRRA. With permission from the Commission to file and protect the filings confidentiality, we can show this proof.

Further proof was shown to the FCC in a non-confidential meeting the undersigned attended with counsel and engineering staff of Amtrak in the last month. Not even 100 kHz is needed along even the most used train corridors, and where corridors cross, the spectrum can be reused in a well-know cellular reuse architecture. What SCRRRA wants to do is build a system for itself and its admitted partners (see the belated admission in docket 10-83, after Skytel pointed out the SCRRRA misrepresentation) for a general purpose new wide-area land PMRS that will, as a minor use of capacity, include PTC. And it wants the remainder, majority of the 1,000 kHz from MCLM for profit, it stated. It misrepresents before the FCC by keeping these and other facts in this list hidden and asserting the contrary.

(4) Even for its planned wide-area land PMRS system discussed and illustrated in Exhibit 3, SCRRRA does not need, as this documents shows, even for “full redundancy” added, even one half of 1,000 kHz. It need less then other major railroads as indicated herein, for actual PTC wireless system and signaling. That is 100 KHz or even less, with spectrum efficient architecture.

Respectfully submitted, November 10, 2014

/ s / **Warren Havens**

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Warren Havens

Individually and as President of the companies in the defined Entities: **Skytel -1:** Intelligent Transportation & Monitoring Wireless LLC and Skybridge Spectrum Foundation, and **Skytel-2:** Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC and V2G LLC

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coverage of all tracks in a system such as run by major public passenger trains including SCRRRA.

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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.*

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Warren Havens  
President of the Entities named above

November 10, 2014

Certificate of Service

The undersigned certifies that he has on this 10<sup>th</sup> day of November 2014, caused to be served, by first-class United States mail, a copy of the foregoing filing to:<sup>5</sup>

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<sup>5</sup> 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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*/s/ [Filed Electronically. Signature on File]*

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Warren Havens