

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 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” 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

¹ 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.*²

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

² 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."³ 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,⁴ but is using high AGL

³ 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.

⁴ 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**

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

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.

Warren Havens
President of the Entities named above

November 10, 2014

EXHIBIT 1

Before the Federal Communications Commission
Washington, DC 20554

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MARITIME COMMUNICATIONS/LAND) WT Dock. 13-85
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) FCC FNs. 0004030479, etc.

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

Further Reply to Opposition to Petitions for Reconsideration¹

Skytel Entities (or herein “Entities”) hereby jointly file this further reply and supplement to their initial reply to the MCLM Opposition to the Skytel Recons (or herein “Recons”).² The Entities fully reference and incorporate herein their initial reply to the Opposition that was filed on October 31, 2014 (the “Initial Reply”).³

1. First, since MCLM argues that late-filed pleadings must be dismissed, then its own Opposition should be dismissed. The Initial Reply showed, among other things, that the Opposition was untimely and should be dismissed. MCLM and its counsel have to be assumed to know the rules that cause their Opposition to be late-filed, but they don’t request acceptance of late filing and give any reasons in support, and it is far too late to request that now. Clearly, in that case the Opposition is frivolous, due to being clearly late, and filed only for confusion and delay. It is thus a violation of Section 1.52, and MCLM and its counsel should be sanctioned. The sanction should be at minimum that MCLM and any of its agents are barred from any

¹ The defined terms herein have meaning given in the Entities’ Initial Reply filed on October 31, 2014.

² As shown by Exhibit 1 of their initial reply, Entities have until November 5, 2014 to file their reply and therefore this further reply and supplement is timely

³ Together, the instant filing and the Initial Reply constitute the entire reply of the Entities to the MCLM Opposition.

further filings in 13-85 or other proceeding or on ULS related to FCC 14-133, which is especially appropriate since they have no Article III interest and standing, or other procedural basis, to challenge FCC 14-133, as explained in the Recons, and also as explained the Recons because the Commission need not and should not allow MCLM to further engage in any actions to seek extraordinary Second Thursday relief, which is purely under Commission discretion.

2. The Recons were timely. The Initial Reply and Explanation unambiguously demonstrate that the Recons were timely filed, including, but not limited to that Skytel-2 Recon was timely filed via the FCC's ULS pleading system and thus was received by the FCC via an official pleading submission system. It is notable that Opposition fails to mention that the Skytel-2 Recon was timely filed on ULS, and thus it does not even challenge that fact.⁴ Clearly, MCLM avoids it because it undercuts its spurious arguments concerning late filing of Skytel-2 Recon.

The Wireless Bureau setup docket 13-85 for any member of the public to filing pleadings within a pleading cycle that was established, and at least permits subsequent filings, but filings outside the pleading cycle need not be considered by the FCC. On the other hand, Entities are parties to the subject license applications captioned in Recons, initially and most fundamentally, because they challenged those applications in a timely manner when they were placed on Public Notice, under 47 USC §309(d).⁵ In addition, the Opposition fails to explain why it would be in the public interest for the Commission to reject the Recons when, as shown in the Entities' Explanation, they did submit the Recons timely via the ECFS system well before the midnight deadline, but the ECFS system was not working and would not accept them, and therefore, the

⁴ MCLM and its counsel should be found to lack candor for avoiding the fact of the Skytel-2 Recon timely filing in its Opposition.

⁵ Entities do not simply submit comments in docket 13-85 as a non-party or what may be called a party in that docket. A party under 47 USC §309(d) is distinct from a party that timely files a pleading in a public docket such as 13-85, in which anyone, even without Article III interest and standing is permitted to file pleadings. Even if the FCC were to deem that the Recons were untimely filed in 13-85 on ECFS, the Skytel-2 Recon is nevertheless a timely pleading on ULS further challenging the subject applications, due to the new facts that arose by the Commission decision in FCC 14-133.

Entities were required to file them via other electronic means.⁶

Furthermore, contrary to the Opposition's assertions, when the Commission instituted electronic filing of pleadings, it means that the public has until up to the deadline to file via the Commission's electronic systems, not that the public is required to file by a certain time well in advance of said deadline, or that electronic filers should somehow predict or divine that an FCC system (ECFS in this case) will have issues at a given time and therefore file in a way to avoid those.^{7/8} Further, when the ECFS system does not allow submissions before a deadline due to excessive incoming pleadings being filed, or for any other reason, then that is good cause for the FCC to accept late filing, especially where the filer can show that it would have timely filed via ECFS (or other FCC e-filing system) if not for ECFS system problems (that is the case here).^{9 /10}

In sum, nothing the Opposition argues warrants dismissal of the Recons as untimely, and

⁶ Entities completed the filing cover form, uploaded their respective pleading and hit the button to proceed to submit (numerous times before the deadline), but ECFS would not function.

⁷ Since the Commission allows electronic filing of pleadings as an official filing method, then it must also understand that its electronic filing systems may encounter problems at times that warrant granting exceptions to filing deadlines.

⁸ In any case, the Entities have demonstrated clearly that they did not wait until the last minute and that they were not experiencing any technical issues on their side, and that they were able to submit the Recons to the Commission by other electronic means, including via FCC ULS pleading system well in advance of the deadline.

⁹ The Commission allows submission of pleadings via paper and electronic means. The public has the right to rely upon the Commission's electronic filing systems that allow submission of pleadings and other filings right up to the last second of a filing deadline. In the case of electronic filing that is up until just before midnight on the filing deadline. The FCC accepts paper filings until 7:00pm ET. The FCC does not reject paper filings that are submitted at 6:59pm ET or even right at 7:00pm ET, and if something occurred on the FCC's side to prevent a party from filing in paper by 7:00pm ET (e.g. a million people show up that day to file via paper and not everyone can get into the building by 7pm, or the FCC office closes for some reason prior to 7pm), then that would be good cause for grant of an exception to permit late-filing. There is no reason electronic filings should be treated differently.

¹⁰ ECFS did not provide a notice to parties filing on that date, including the hour before midnight, that parties should expect significant delays, or even inability to file, due to the extremely high incoming pleadings that were being received in another docket, or in all dockets combined. It would have been easy for ECFS staff to give such a notice itself, as well as in the daily digest. The FCC gave no such notice. Along with such a notice, the FCC should provide an alternative means to efficiently and promptly file pleadings during such periods of ECFS malfunction or jamming, otherwise, a party's submissions on ECFS are not accepted due to not fault of the filer, and situations like this one arise whereby an adverse party makes frivolous arguments to attempt to have dismissed a filing properly submitted with ample proof of such proper submission.

doing so would not be in the public interest. However, if for any reason the Commission determines either of the Recons to be untimely, and does not fully consider them and find them procedurally sound, the Commission should nevertheless fully review and decide upon the substance for reasons given in §1.106(c)(2). For example, the Commission has properly found:

...[A] petition for reconsideration which relies on facts not previously presented to the Commission may be granted only if these facts relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or if these facts were unknown to petitioner until after its last opportunity to present such matters. Should these circumstances not be present, the rules nevertheless allow grant of the petition for reconsideration should the Commission determine that consideration of the facts relied on by petitioner is in the public interest. *Id.* at § 1.106(c)(2).

In re Applications of Stockholders of CBS Inc., FCC 96-478, 11 FCC Rcd 19746; 1996 FCC LEXIS 6981, Rel. December 17, 1996.

3. Entities have standing. The Opposition makes a weak and contrary argument on lack of standing. First, it talks about standing of “Havens,” but “Havens” is only one of the many listed Entities in one of the two Recons. Second, the Opposition does not even attempt to describe what it believes are the criteria for legal standing. Next, the Opposition says that “Havens arguably has standing...insofar as...‘Footnote 7’ relief,” but that assertion is not proper in an Opposition. An Opposition cannot “arguably” argue about anything. An argument must be clear one way or the other. Then, with no explanation, the Opposition asserts that everything else in the Recons “is not proper matter for reconsideration.” However, the Opposition gives no explanation of what it means by “not proper matter.” “Proper matter” is not a defined term in FCC law, or other law. It appears to mean nothing more than MCLM does not like it. This entire section in the Opposition labeled “Havens Lacks Standing...” is improper pleading under §1.52 because it makes no sense, and is not supported by any reference to relevant rules and case law, and uses undefined, irrelevant terms. The Commission designated all of the Entities as parties in FCC 11-64, which unquestionably makes all of these Entities parties to any licensing application listed in the HDO or that came after the HDO resulting from MCLM’s attempt at

special relief from the HDO, including by its assignment to Choctaw and the associated request for special relief that resulted in docket 13-85. The reasons the Commission made the Entities parties in the HDO is entirely clear in the various petitions of these Entities cited in the HDO as a seminal cause of the HDO itself. That includes that the Entities are the lawful high bidders for all of the MCLM geographic AMTS licenses. For the above reasons, the Opposition's section "B." is frivolous and sanctionable and MCLM's attorney and MCLM should be sanctioned.¹¹

4. The Recons are all proper petitions regarding the Order, FCC 14-133. This responds to Opposition's section "C." Opposition distorts the Skytel Recon's presentations. The Recons properly brought up new facts including MCLM admissions that the Commission should consider in maintaining any relief to MCLM. The Opposition avoids any specifics of the Recons in its section "C." It misrepresents the Recons in stating that they assert that the *Jefferson Radio* policy cannot be waived. The Recons' asserted that the *Second Thursday* policy or doctrine is bad law, given a Supreme Court decision that was cited, at least as applied to this extreme case of MCLM-Choctaw. The Opposition avoided that, as one more example of improper pleading. It is improper to misrepresent or distort an opponent's pleading and to then attack that, or to setup a straw man to attack. MCLM has a history of this from its beginning to present.

5. Recons' challenge to footnote 7 relief is entirely sound. This responds to Opposition's section "D." Opposition asserts, with no explanation, that footnote 7 relief is not a new exception to the *Jefferson Radio* policy. However, the Commission itself described it as a unique, new relief to *Jefferson Radio* solely for this one railroad and in the context of an alleged Congressional mandate. It is indeed a new exception, and it is not in any way justified under the principles of *Jefferson Radio* or *Second Thursday*, or any other policy or doctrine that the

¹¹ MCLM itself is purportedly owned and operated by an attorney, Sandra DePriest, and its current existence and operations are solely under the bankruptcy court Chapter 11 order involving Choctaw, which in itself is managed by John Reardon, an attorney. All MCLM filings must be deemed to be approved by these inside attorneys for MCLM and Choctaw, and they should be sanctioned as well as Mr. Keller for frivolous pleadings. The entity MCLM should also be sanctioned.

Commission has ever implemented in its decisions or that any court has upheld. In addition, as the Recons explained, the factual premises of the Commission in granting footnote 7 relief are incorrect, and once the actual facts are reconsidered, then the Commission by its own logic has to deny that relief. This includes, that Congress did not require railroads to obtain 220 MHz range spectrum, or 1 MHz of spectrum, and SCRRRA's internal documents that Entities timely presented in their challenges of MCLM's assignment to SCRRRA demonstrate that SCRRRA did not need even half of 1 MHz in any of its geographic area, nor was MCLM the only source of 220 MHz range spectrum. MCLM and SCRRRA misrepresented to the Commission the facts that were the basis of footnote 7 relief. For that, they should be sanctioned.

The Opposition section "D" cites the *LaRose v. FCC* case, also cited in the Recons. However, the Recons showed that under *LaRose* the licensee that obtained a type of *Second Thursday* relief had the bad actor removed and was being operated by a new court-appointed controller. That is entirely different from the MCLM request for special relief under footnote 7 and *Second Thursday*. MCLM keeps its own tentatively admitted wrongdoers, the DePriests, as the persons in charge of MCLM and its representations to the Commission for said relief, as if the discredited wrongdoers should now be believed as to facts asserted to get the relief, and trusted with the proceeds of the sale to SCRRRA. None of that makes sense under any FCC decision granting any type of *Second Thursday* relief.

The Opposition also, under section "D", falsely asserts that Entities "asserts...allegations against Maritime as if they were proven..." That is not correct. The Recons assert that MCLM tentatively pled that the DePriests were wrongdoers for the purpose of attempting extraordinary relief from the *Jefferson Radio* doctrine. That is a fact. The Recons further noted, also accurately, that MCLM has not admitted to any wrongdoing, if they do not obtain that relief, otherwise, the Commission would not have in the Order lifted the stay in docket 11-71 so that MCLM could proceed to hearing on the issues of its wrongdoing, licensee disqualification,

license revocation, and various financial sanctions. Again, MCLM and its counsel distort the actual opponent's pleading for improper purposes.

Next, the Opposition at section "D" asserts that "it is...virtually impossible, that the DePriests would receive any of the proceeds...paid by SCRRA." These assertions are simply an attorney's bald assertion, not supported by any sworn statement, and without citing any bankruptcy court order or law, or anything else in particular to support those strident assertions.

Next, the Opposition asserts that "The Commission has not adopted a rule of general applicability to all licensees." That is another frivolous assertion. The FCC has a set of rules by which licensees apply for, and can maintain, and assign licenses. Any exceptions to those rules has to be either by a proper rule change, in notice-and-comment rulemaking, or by creation of a doctrine or policy that is also subject to proper notice and comment, because parties affected by it have to have the opportunity to challenge the proposed new law. That is required under APA, and case precedent, as discussed in the Recons. The Opposition does not show otherwise.

The Opposition further suggests that "There was ample opportunity to comment on the proposal," by which MCLM suggests footnote 7 was simply a proposal. Footnote 7 was not in any way a proposal. It was part of an order that was entirely new and never previously proposed to anyone. It simply invited MCLM and SCRRA to apply for an exception under the *Jefferson Radio* doctrine, for vaguely suggested reasons, and assumed facts that were incorrect, as shown by the Entities' challenge to the MCLM assignment to SCRRA, and further shown thereafter.

The Opposition further mischaracterizes by stating that the Recons assert "the *Jefferson Radio* policy...is also invalid." However, the Recons said nothing of the sort, instead they supported the *Jefferson Radio* policy by arguing that it should not be broken by an improper, new footnote 7 exception. Further, contrary to the Opposition, the *Jefferson Radio* policy arose in a decision by the DC Circuit Court, which the Commission was obligated to follow. Footnote 7 is nothing of the kind. When a policy or doctrine arises by action of a Federal agency, it has to

follow proper public notice and allow comments, before subjecting licensees and applicants to the policy or doctrine. A court precedent is a different matter and applies not only to the particular case, but also sets a precedent for similar cases, at least in decisions such as the DC Circuit Court's *Jefferson Radio* decision.

6. MCLM does not effectively refute the new facts of disqualifying wrongdoing. As partly discussed above, the Opposition lightly deals with, without any specifics, the very serious new facts clearly presented in the Recons regarding MCLM's unlawful warehousing of AMTS site-based licensed stations nationwide for up to 2.5 years, that also involves extensive lying to the FCC in violation of 18 USC §1001. Because MCLM did not refute that weighty, specific showing of what should be found in itself to be fully disqualifying, and a bar to any relief from the Jefferson Radio policy. It should be deemed that MCLM admits to those facts and conclusions, or at minimum that it had no effective counter facts and arguments.

/ s / Warren Havens

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
2509 Stuart Street, Berkeley CA 94705. Phone (510) 841 2220

November 5, 2014

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 Entities named above

November 5, 2014

Certificate of Service

The undersigned certifies that he has on this 5th day of November 2014, caused to be served, by first-class United States mail, a copy of the foregoing filing to:¹²

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
Mary Gosse Mary.Gosse@fcc.gov

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

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Counsel for Puget Sound Energy, Inc
Jeff Sheldon jsheldon@lb3law.com

Jack Richards
Wesley Wright
Albert Catalano
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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

Charles A. Zdebski

¹² 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.

Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
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P.O. Box 33428
Washington, D.C. 20033
Counsel for Maritime Communications/Land Mobile LLC
Robert Keller rjk@telcomlaw.com

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James A. Stenger
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Counsel to Environmental LLC and Verde Systems LLC
James Stenger jstenger@chadbourne.com

Jimmy Stobaugh, GM
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

EXHIBIT 2

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:

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 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@chadbourne.com' <JStenger@chadbourne.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
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
T: 202.857.2574
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CONFIDENTIALITY NOTICE: This message and any attachment may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, any distribution, copying, or use of this message (including any attachments) is strictly prohibited. If you are not the intended recipient, please delete it (including any attachments) and notify me of the error by reply e-mail.

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
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Jack Richards
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Albert Catalano
Keller & Heckman LLP
1001 G Street, N.W.
Suite 500 West
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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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
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METROLINK

Positive Train Control Implementation in the LA Basin

**Darrell Maxey- SCRRA
Nick LaRocco- Parsons**

January 7, 2012
National Railroad Construction
and Maintenance Association

PTC Overview

- Positive Train Control is a predictive collision avoidance system that provides a warning to train operators and then intervenes and stops a train before a collision or other hazardous train movement can occur.
- Small In-House Team on Special Assignment -Since Nov. 2008
- Consultant Support Teams Mobilized -January 2009
- Large Turnkey (Vendor/Integrator)
Parsons with Wabtec /ARINC as
key suppliers awarded Oct. 2010.
- I-ETMS will be deployed.
- SCRRRA PTC in-service summer 2013.



Metrolink Key Characteristics

- 7 Routes, 55 Stations, 45,000 average daily riders
- 227 Route miles maintained. Another 348 miles shared.
- 324 Track miles maintained. 180/150 double/single track.
- 162 Weekday Revenue Passenger Trains
- 500 + Daily train movements - Metrolink, Amtrak, UP, BNSF
- 52 Locomotives, 180 Passenger Coach Cars
- Operating Budget \$179.4 million.



Southern California Rail Network



Train Control and Signal System

- 102 Control Points
- 90 intermediate signal locations
- 461 at-grade crossings- vehicle and pedestrian
- 5 County Southern California communication network
 - Leased commercial telco. services – MPLS, copper.
 - Migrating to Metrolink owned fiber, digital microwave
 - VHF/Voice 160 MHz Voice, 900 MHz ATCS
- Method of Operation – Centralized Traffic Control w/ ATS
- Computer Aided Dispatch (CAD) –Digicon (unsupported)



LA Basin PTC Unique Characteristics

- BNSF/UPRR/Amtrak/Coaster Interoperability
- Dense mixed passenger and freight territories
- Numerous inter-railroad movements
- Complex multiple main tracks
- 2.2%+ mountain grades in dense urban setting
- High use of wireless communication systems
- Commitment for expedited PTC delivery



SCRRA PTC - Project Execution Approach

- Early-on special long term assignment of dedicated SCRRA staff to deliver the combined program
- Utilize multiple on-call consultants/contactors for support
- Study, learn and apply Class 1 Freight's PTC technology and implementation approach (I-ETMS).
- Consolidate as much work as possible with single contractor- a Vendor/Integrator to assure accountability for systems integration.
- Develop and implement PTC training and transition plan.



SCRRA PTC – Owner’s Role

1. Perform initial assessments, scoping, cost estimates
2. Develop FRA PTC Implementation Plan
3. Develop V/I RFP and manage the solicitation process
4. Develop mapping/track data base
5. Harden and expand the backhaul comm. network
6. Procure 220 MHz spectrum
7. Install WIU's
8. Secure grant funds.
9. Program Manager
10. Coordinate Projects



SCRRA PTC - Vendor Integrator's (V/I) Role

1. PTC system development, engineering, integration
2. Modify or add PTC new assets- test, place in-service
 - Provide new computer aided train dispatch system with full PTC compatibility
 - Provide PTC Back Office Systems/Server (BOS)
 - Install on-board equipment in locomotives & cab cars
 - Install 350 PTC radios at signals and CP's, locomotive and cab cars base stations.
 - Provide PTC communication system
 - Provide Network Management System
3. Perform training of all SCRRA staff & contractors
4. Provide spare part and warranties

Major Project Risks Identified Early On

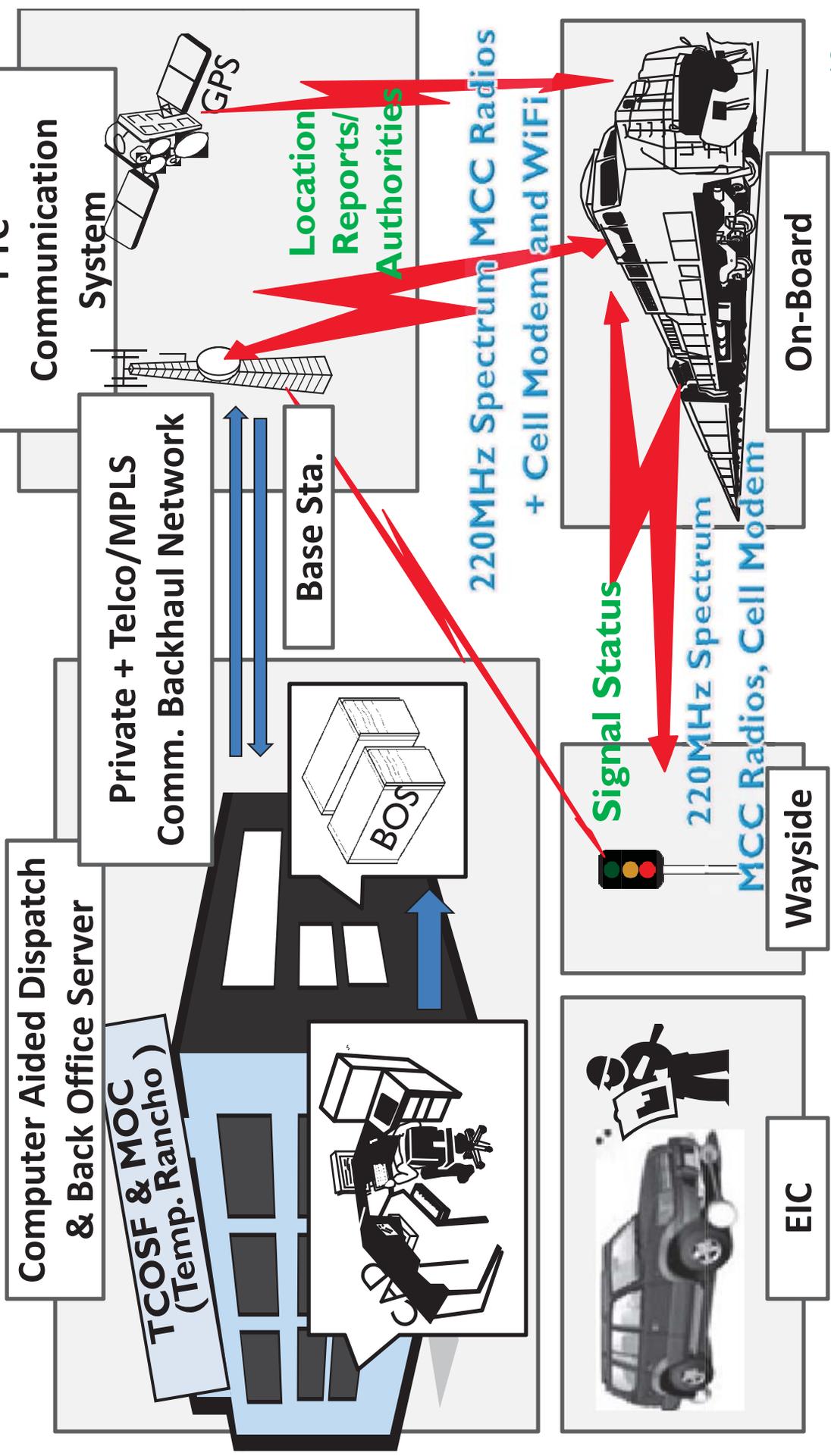
1. Schedule compression - catching up to the same level of expertise as BNSF & UP.
2. Competition for specialized technical resources.
3. Assembling and organizing the owner's team with the right mix of experience and expertise.
4. Procuring a qualified Prime Contractor/Vendor with Federal, State, local public procurement requirements.
5. Funding - both amount and timing
6. Interoperability (ITC standards availability)



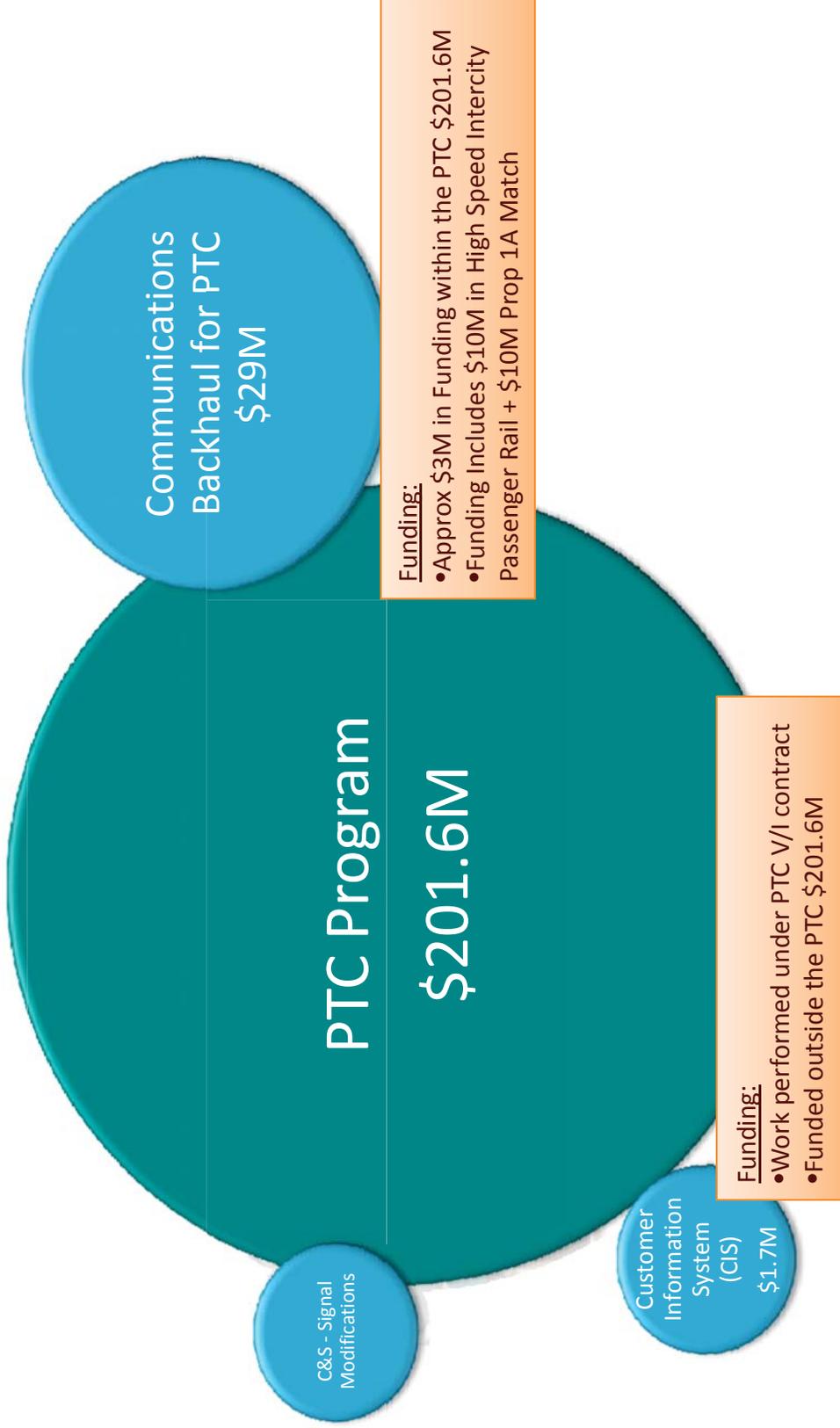
PTC System Major Components and Suppliers

- Computer-Aided Dispatch (CAD) – ARINC
 - Current CAD system is unsupported and cannot be upgraded for PTC compatibility.
- Back Office Server (BOS – ITC system similar to UP, CSX, NS) – *Wabtec/ARINC*
 - Links PTC to CAD. BOS contains the safety critical infrastructure database.
- Communication System – *ARINC/MeteorComm, Lilee/G4S/Parcomm*
 - Delivers PTC messages and commands between the BOS, the wayside signal system and the locomotive using 220-MHz network architecture.
 - This safety system requires a reliable communication backhaul network which will be implemented outside of the core PTC program.
 - Sufficient quantity of 220-MHz wireless spectrum must be acquired and licensed.
- On-Board – *Wabtec*
 - Locomotive-centric system contains the track map, braking algorithm, mandatory directives and restriction information.
- Wayside – *ITC, General Electric, Lilee, Mass Electric*
 - Overlay on the existing wayside signal system. Wayside signals beacon their status to approaching trains.
- Systems Integration - Parsons
 - Lab and field testing, integrating the different systems, training.

PTC System Components

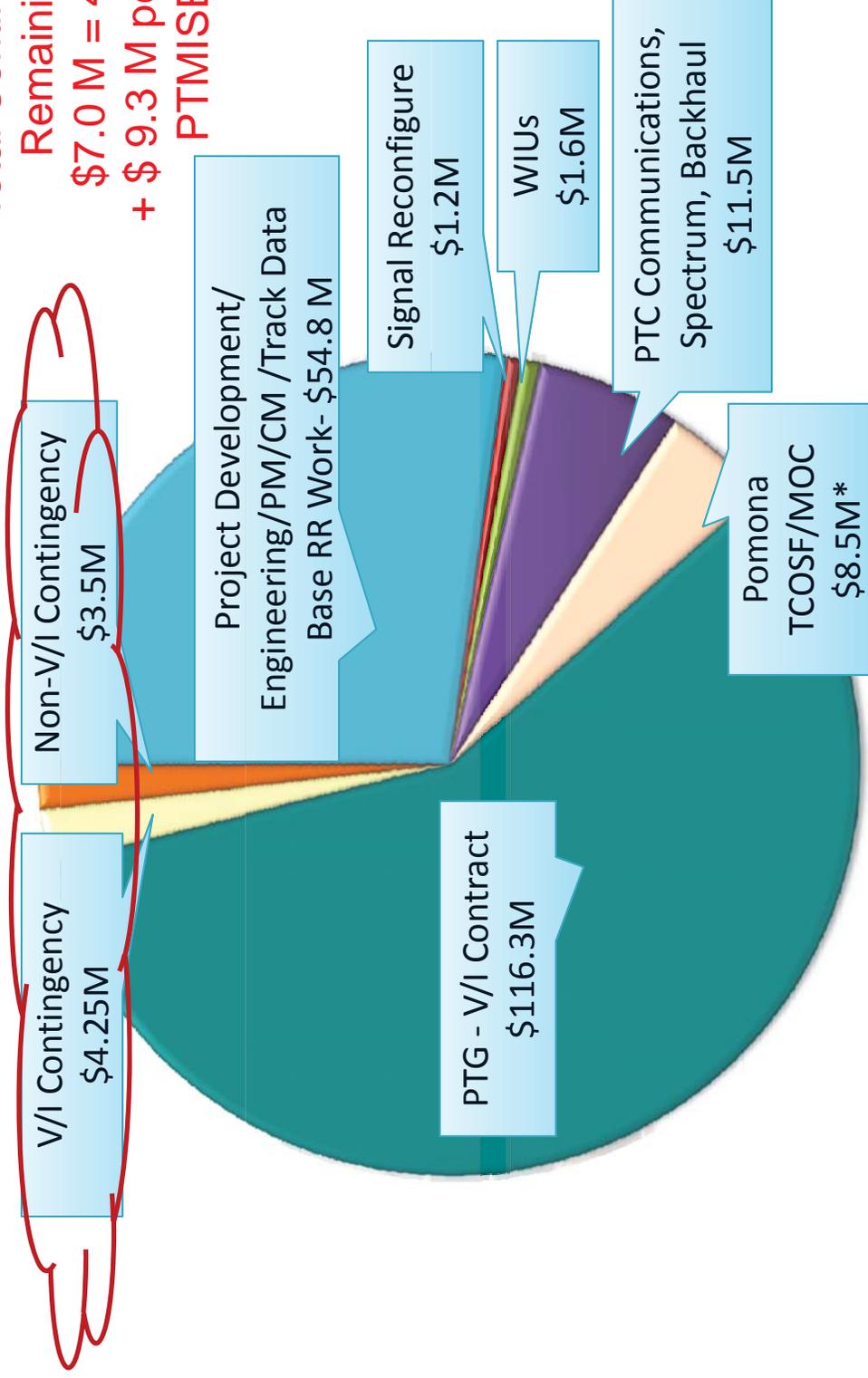


PTC and Interdependent Programs



PTC Program Budget - \$201.6M +

Total Contingency
 Remaining:
 \$7.0 M = 4.6%
 + \$ 9.3 M pending
 PTMISEA



*Additional \$4-5M from PTMISEA anticipated for Pomona TCOSF/MOC

PTC Program Budget – 29% Expended

Project Element / Task	Budget	Expended (Nov 2011)
Project Devlop, Engineering, Track Data Base - PM/CM	54,295,380	29,079,955
Relocate/Reconfigure Signals	1,181,738	228,800
WIUs, C&S, Track Modification	1,577,628	1,544,616
PTC Communications, Wireless & Backhaul	11,507,800	912,685
Acquire PTC 220 Radio Spectrum from MCLMC	7,178,000	657,800
PTC Contribution to Overall Comm. Back-haul Program	4,329,800	254,885
RR Work Orders/Coordination	500,000	807
Pomona TCOSF/MOC	8,553,751*	861,523
Vendor/Integrator	116,918,018	25,100,523
On Board Component	21,745,067	2,186,527
Communications Component	12,817,839	2,642,878
Wayside Communications Component	22,819,233	6,026,622
Back Office Component	5,866,910	877,000
Dispatch System	6,276,394	2,135,745
Integrated System	9396994	-
Contract Documentation	5,502,301	1,011,702
Hi-Rail Test Vehicles	462,336	462,336
Project Eng., PM, Support Tasks, Facilities & Hi-rails	24,680,444	8,442,706
Commercial Terms (Bonds, Insurance) & Taxes	7,350,500	1,315,007
Remaining V/I Contingency and Options	3,598,454	**
Remaining Non-V/I Contingency	3,500,000	-
Project Totals	201,632,769	49,872,380

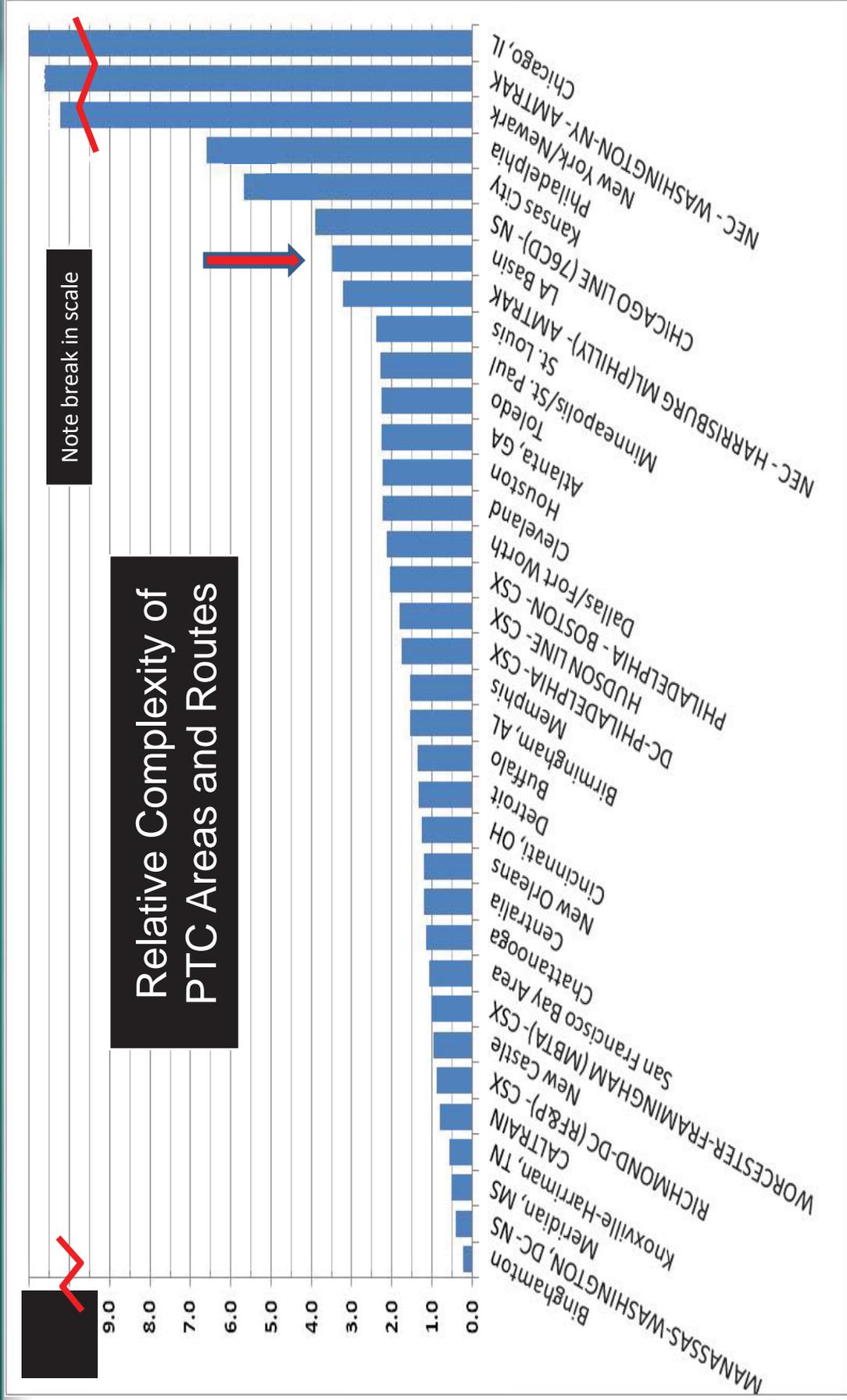
Delivering and Coordinating the SCRRA PTC C&S Backlog!

Next 3-Years (in millions of dollars)

Program Category	FY 11/12	FY 12/13	FY 13/14	Total
Positive Train Control	50	60	40	150
Orange County Comm. Network	12	5	0	17
Valley/Ventura/ San Gabriel Network	15	15	5	35
Completing Orange County MSEP/OCX	10	2	0	12
Capital Rehabilitation and new Capital Projects	10	10	10	30
Signal and Comm. Maintenance	12	12	13	37
Third Party Support Projects	10	10	10	30
Total Annual PTC C&S Program Costs	119	114	78	311

PTC Program Funding – 33+ Separate Grants!

Secured Funds	Fund Type	\$	201,632,769
Local	MTA Local	\$	3,310,587
Local Match to Federal Formula Funds	RCTC/OCTA/SBAG	\$	157,824
MTA Measure R FY10/11 & FY11/12	MTA local	\$	20,000,000
State STIP	State	\$	125,293
Prop 1B - TSGP (SCRRA, VCTC)	State	\$	12,953,285
Prop 1B - PTMISEA (SCRRA)	State	\$	7,871,319
Prop 1B - FY 10/11 & FY 11/12 SLPP	State	\$	20,000,000
Prop 1A - Intercity to SCRRA	State	\$	46,550,000
Prop 1A - SCRRA	State	\$	12,200,000
Prop 116 - OCTA	State	\$	32,715,778
National Railroad/ State	State	\$	9,855
OCTA FTA Sec 5307	FTA - OCTA	\$	4,147,427
ARRA Formula	FTA ARRA	\$	17,825,530
Federal formula Funds	FTA	\$	631,296
Federal Rail Research and Development Funds (SCRRA)	FRA	\$	487,000
FRA Technology Grant SCRRA	FRA	\$	6,605,446
Prop 1A SCRRA	State	\$	12,542,129
FRA High Speed Intercity Passenger Rail (HSIPR)	FRA - Caltrans	\$	3,500,000
Programmed Funds		\$	9,301,415
PTMISEA FY10/11 (Contingency)	State	\$	9,301,415
Total		\$	210,934,184



Interoperable ROUTES shown in all CAPITAL LETTERS

Metrolink PTC In Service Summer 2013

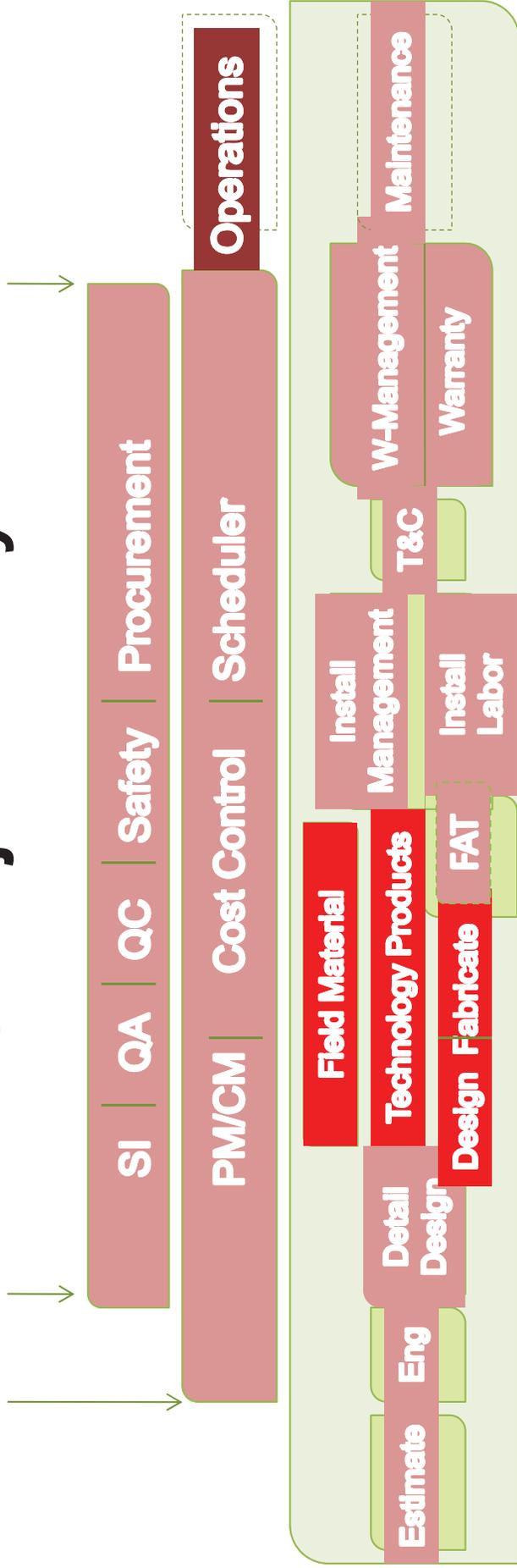
What does that mean?

- Cab Cars & Locomotives PTC-equipped
- SCRRA wayside signals PTC equipped
- BOS is functioning
- Essential Comm. Network complete. MPLS links in.
- Extensive lab, field, testing with trains completed
- Integration testing and validation completed.
- FRA certification of PTC Safety Plan
- PTC operating rule changes in effect
- Operations & Maintenance personnel trained

PTC Project Lifecycle

Transfer of Ownership

RFQ NTP



- Metrolink**
- Parsons**
- Wabtec**

Parsons Perspective of Project

- Lump Sum Bid
- Undeveloped Technology/ Unpublished ITC Standards
- Third Party Stakeholders- UPRR, BNSF, FRA...
- Expedited Schedule
- Vendor Resources Stretched to meet 12/2015 industry mandate
- First-time System-wide implementation
- Commitment of 20 Dedicated Staff for duration

Soup to nuts Implementation of Untested PTC Technology in a Difficult area

Spectrum Needs Analysis- LA Basin

Enough spectrum is needed to support:

- Full primary coverage of specified design area
 - Minimum required signal strength (from link budgets)
 - Minimum required signal-to-interference ratio
 - Capacity to handle offered load
- Coverage redundancy where needed
- A Frequency Re-Use Plan
 - Minimize Frequencies Required
 - Limit Co-Channel Interference
- Contingency for inaccuracies in modeling
- Flexibility to deal with interference and other channel anomalies
- Anticipated growth

Change Management

What is Change Management?

From the BNSF Change Management Users Manual:

It is the process that the BNSF Railway utilizes to manage various railroad assets. A strong Change Management Process is a critical necessity for the railroad's real-time authority compliance/collision avoidance systems

I-ETMS requires a Safety Critical Database

Configuration Management

What is Configuration Management?

- Configuration Management (CM), is a process to **maintain the consistency and integrity of a system or software product throughout it's lifecycle**
- Configuration Management establishes the baseline control of changes made to a product's hardware, software and/or documentation

Full Time Network Manager and Database Manager in addition to Document Control Manager on the Project

Project Risk

- Project definition- **Still being defined**
 - Implementation- prescribed by Class Is-
 - Warranty and Maintenance
- Timeline/schedule aggressive- **Now Mid 2013**
 - Technology still being developed
 - Every railroad installing at the same time
- Technology- **Still being developed**
 - Interoperability
 - Communications-220 MHz, coverage, bandwidth, throughput
 - Marketplace constraints- limited suppliers and systems integrators
 - Data Radio- unproven- **Not available until 4/2012?**
 - Acquire Spectrum- **Caught up in FCC protest**
- Procurement
 - Limited number of vendors- **Beginning to see delays due to resource limitations**
 - Future sole source procurements for replacement parts

Project Risk (cont'd)

- Operational
 - Book of rules may require modifications- **require modifications**
 - Regulatory Interface and approval- **Potential impact**
 - Training of all maintenance and operational personnel-**Timing is an issue**
 - Potential operational degradation (PTC could lessen throughput)
 - Maintenance of System
 - Configuration Management of Infrastructure Database- **Key to testing and implementation and FRA approval**
- Resource Requirements
 - Support and Training Requirements
 - Resources to manage implementation- **Additional resources required**
 - Simultaneous Industry-wide implementation- **Constraining Implementation**
- Contract
 - Scope and deliverables definition- **Still being defined**
 - Total \$\$ Value & Payment terms

Major external schedule impacts

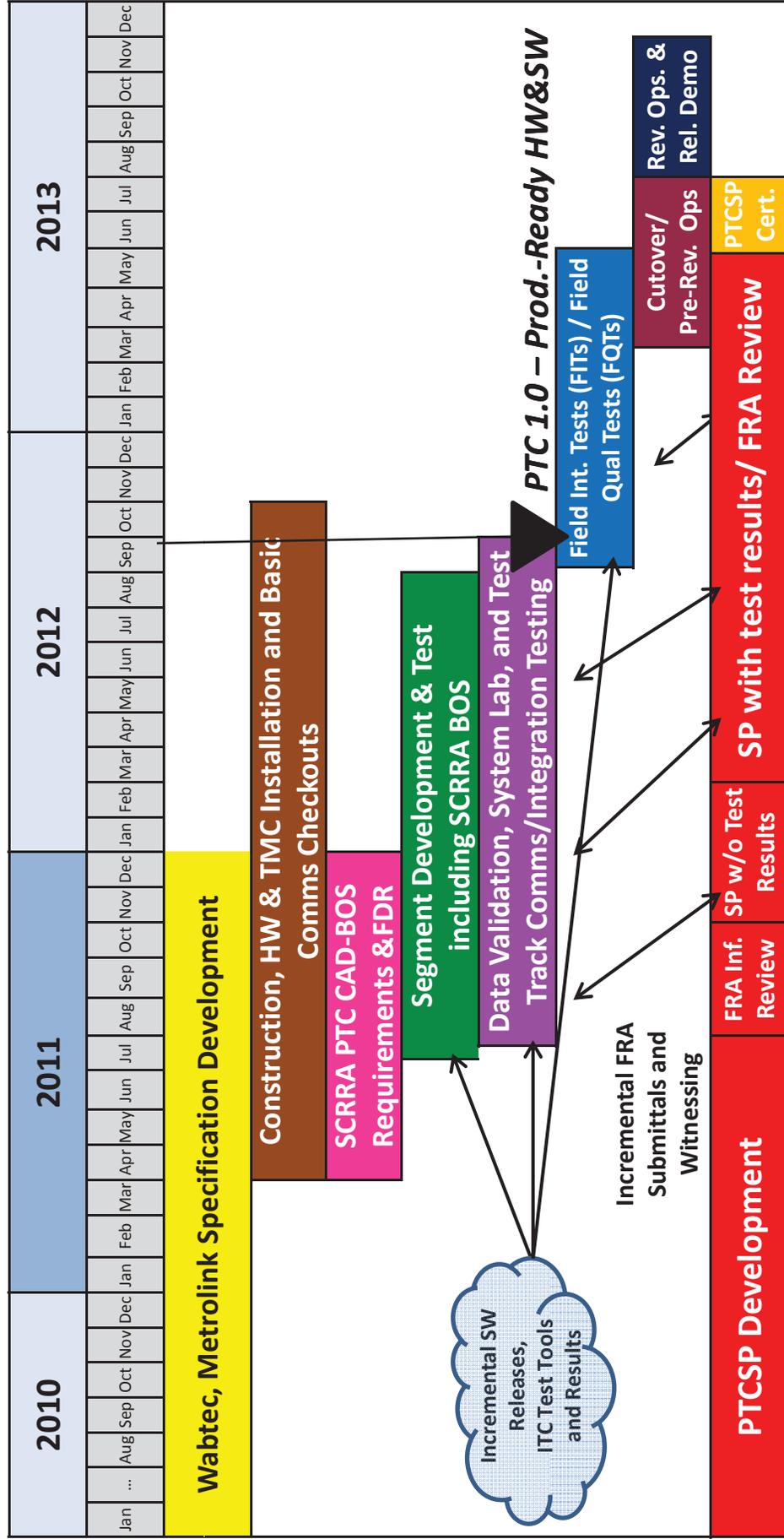
- Interoperable Train Control (ITC) Specifications need to be finalized in order to complete design of the BOS, On-Board System and CAD/BOS interface. **Delayed 9 months.**
- Meteorcom, a firm owned by the four ITC railroads is responsible for developing the PTC radios. **Currently approximately 1 year behind schedule.**
- PTC-220 LLC, an industry association similar to ITC is establishing the protocols for the communication network design and management. **Delayed 9 months.**
- Spectrum acquisition currently held up in court, needs FCC license granted. **Delayed in courts and FCC.**

PTC Schedule – Current (Slipped 6 months)

KEY ACTIVITY	START	FINISH	2011				2012				2013		
			Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2			
On-Board -Install/Test	10/6/11	10/11/12											
PTC Communications-Install/Test	10/24/11	8/25/12											
Wayside -Install/Test	7/25/11	7/20/12											
BOS -Install/Test	4/1/12	3/1/13											
CAD and then PTC CAD	11/5/10	2/1/13											
Early System Test (Incl BNSF ETMS 7)	11/7/11	10/1/12											
PTC 1.0- HW, SW, Test Plans Ready	10/1/12	10/1/12											
Field Integ. Tests/ Field Qual. Tests	9/1/12	5/31/13											
PTC Safety Plan Certification	2/1/13	6/1/13											
PTC Revenue Service	6/1/13	7/1/13											

Road Map Timeline

current master schedule submittal based on roadmap



System Implementation Summary

Getting Agreements in Place !

Direct Parties to Agreements with Parsons and/or SCRRRA		Content/Type of Agreement									
	Memo Of Understanding	System Level Support	Subsystem/Component Level Support	Other Services e.g. Training	Hardware	Software	Est. Months Lead Time	NEED BY DATE			
ITC	?						6	Q3-2012			
PTC 220	New Shared Use Agreement						9	Q3-2012			
BNSF	Modified SUA						6	Q3-2012			
UP	Modified SUA						6	Q3-2012			
Amtrak	Modified SUA						6	Q3-2012			
Parsons		Yes					12	Sys. Acceptance			
Wabtec			Yes	Additional Services?	Yes	Yes	12	Sys. Acceptance			
ARINC			Yes	Additional Services?	Yes	Yes	12	Sys. Acceptance			
MeteorComm			Yes	Yes		Yes	12				
Red Hat				Yes			9	PTC 1.0			
Radio OEM			Yes	Yes	Yes		9				
WMS OEM					Yes	Yes	6				
Cory's			Yes	Yes	Yes	Yes	6	Q3-2012			

PTC Work Accomplished to Date

On- Board

- Pilots complete

Office

- CAD in testing
- BOS awaiting Class I railroad acceptance

Wayside

- Wayside Interface Unit install on schedule
- Antenna install on schedule

Communications

- Design Complete
- Base Station Construction Commencing

Lessons Learned

- Communications is the key but still in major development
- PTC Radios are still being developed- 2nd qtr. 2012
- Systems Integration must start from the beginning
- Document Control and Configuration and Change Management are essential
- Testing - begin with a lab environment then move to field
- Owner needs to be ready for the change
- Training must be comprehensive and timely
- Must partner with the tenant railroads
- Partner with the FRA to expedite reviews of Documentation

Partnering with the Owner is absolutely essential

QUESTIONS



Certificate of Service

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

Parties in Docket No. 11-71:

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⁵ 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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